

STATE OF CALIFORNIA  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
REGULAR BOARD MEETING

RESOURCES BUILDING  
1416 NINTH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

Friday, March 21, 2008

8:35 A.M.

KATHRYN S. SWANK, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President  
Mr. Butch Hodgkins, Vice President  
Ms. Lady Bug Doherty, Secretary  
Ms. Rose Marie Burroughs, Member  
Ms. Teri Rie, Member  
Mr. John Brown, Member  
Ms. Emma Suarez, Member

STAFF

Ms. Virginia Cahill, Legal Counsel  
Mr. Jay Punia, Executive Officer  
Mr. Eric Butler, Senior Engineer  
Mr. Dan Fua, Supervising Engineer  
Mr. Gary Hester, Chief Engineer  
Mr. Geoff Shumway, Staff Assistant  
Ms. Lorraine Pendlebury, Staff Assistant

ALSO PRESENT

Mr. Jeremy Arrich, DWR  
Mr. John Bassett, SAFCA  
Ms. Peggy Bohl, Clarksburg resident  
Mr. Paul Brunner, TRLIA

APPEARANCES CONTINUED

Mr. Joe Countryman, MBK Engineers

Mr. Steve Dawson, DWR

Mr. Paul Devereux, RD 1000

Mr. Tom Eres, Hofman Ranch

Mr. Thomas Foley, Concerned Citizens for Responsible  
Growth

Mr. Eric McGrath, DWR

Mr. George Qualley, DWR

Mr. Ric Reinhardt, TRLIA

Mr. Ken Ruzich, RD 900, West Sacramento Area Flood Control  
Agency

Mr. Kasey Schimke, DWR

Mr. Jeff Schneider

Mr. Scott Shapiro, TRLIA

Mr. Keith Swanson, DWR

Ms. Lynne Yackzan, Unger Riverfront

Ms. Shanna Zuspan, City of West Sacramento

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and  
3 gentlemen. It is Good Friday. Welcome to the Central  
4 Valley Flood Protection Board's monthly public meeting.

5 If Mr. Punia, could you call the roll.

6 EXECUTIVE OFFICER PUNIA: Jay Punia, executive  
7 officer, Central Valley Flood Protection Board.

8 Our ex officio members are not here, and Board  
9 Member Teri Rie will be coming late from 10:30, and Board  
10 Member Emma Suarez is absent.

11 And the rest of the Board members are here.

12 PRESIDENT CARTER: Thank you very much.

13 At this time, I have a brief announcement. There  
14 has -- the Army Corps of Engineers has called a meeting at  
15 short notice regarding the Corps' vegetation standard.  
16 They've asked me to attend. There are some senior Corps  
17 officials from the headquarters office in Washington,  
18 D.C., that are going to be attending here. That's been  
19 scheduled to take place from 9:00 to 10:30. In my  
20 absence, Vice President Hodgkins will take the gavel and  
21 keep things rolling.

22 So with that, I will pass the gavel on to Butch.

23 VICE PRESIDENT HODGKINS: Okay. Can we move  
24 forward to Item 2, Approval of the Minutes of December  
25 21st and January 18th, perhaps one at a time.

1 SECRETARY DOHERTY: I make a motion that we  
2 approve the minutes of December 21st and January 18th.

3 VICE PRESIDENT HODGKINS: Okay. Then should we  
4 note that there are revisions to the minutes that were  
5 distributed and that the Board has received copies of  
6 those revisions.

7 SECRETARY DOHERTY: Right.

8 VICE PRESIDENT HODGKINS: Okay.

9 MEMBER BROWN: I will second that, Mr. Chair.

10 VICE PRESIDENT HODGKINS: Thank you.

11 All those in favor, please signify by saying  
12 "aye."

13 (Ayes.)

14 VICE PRESIDENT HODGKINS: Opposed?

15 Lorraine?

16 STAFF ASSISTANT PENDLEBURY: I'm not opposed, but  
17 would you -- on anything that you vote on, would you do  
18 the roll call? That is something new that you might not  
19 have known about.

20 Okay?

21 SECRETARY DOHERTY: May I ask a question, even if  
22 they are all ayes?

23 STAFF ASSISTANT PENDLEBURY: Yes.

24 SECRETARY DOHERTY: All ayes, I don't think we  
25 need. If we end up with dissenting votes, then I think we

1 need to record that. And in that case -- oh, I see what  
2 you're saying.

3 VICE PRESIDENT HODGKINS: Okay. Sounds like we're  
4 going to do everything by roll call so that we have a  
5 record of who said what.

6 So Mr. Punia, would you call the roll?

7 EXECUTIVE OFFICER PUNIA: Board Member John Brown?  
8 We're voting on the minutes, please.

9 MEMBER BROWN: Aye.

10 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

11 SECRETARY DOHERTY: Aye.

12 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie?

13 MEMBER BURROUGHS: Aye.

14 EXECUTIVE OFFICER PUNIA: President Ben Carter?

15 PRESIDENT CARTER: Aye.

16 EXECUTIVE OFFICER PUNIA: Vice President Butch  
17 Hodgkins?

18 VICE PRESIDENT HODGKINS: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

20 SECRETARY DOHERTY: Aye.

21 VICE PRESIDENT HODGKINS: So the motion is passed.  
22 Approval of the agenda.

23 Is there any changes to the agenda?

24 EXECUTIVE OFFICER PUNIA: Yes. Jay Punia,  
25 Executive Officer, Central Valley Flood Protection Board.



1           The staff is proposing changes to Item 7, Consent  
2   Calendar. 7A, Permit No. 18213, City of Lathrop. Staff  
3   does not have the Corps comments and all the information,  
4   so staff is recommending that 7A be pulled off the agenda  
5   and we will bring it to next month's meeting.

6           7B, Permit No. 18286, Brian Richards, Ord Bend.  
7   That item, also staff is recommending that it be pulled  
8   off the agenda. We don't have the U.S. Army Corps of  
9   Engineers' comments on this project.

10          7C, Permit No. 18301, Asta Construction Company,  
11   Rio Vista. Staff is recommending this should stay under  
12   the consent item, and we have provided the staff report.  
13   It's in your package.

14          7D, permit No. 18321, Department of Water  
15   Resources. Staff is recommending that this be pulled from  
16   the agenda. We don't have the U.S. Army Corps of  
17   Engineers' comments on this permit application.

18          7E, Permit No. 18303, Noboru Nakayama, Clarksburg.  
19   Staff has received Corps' comment on this, and staff is  
20   recommending that this should be pulled from the consent  
21   so that we can provide the information to the Board so  
22   that Board can hear it, and then take action on it anyway.

23          MEMBER BROWN: Jay. Back up just a minute.

24          I think you are getting some feedback on your mic.

25          EXECUTIVE OFFICER PUNIA: Thank you.

1           7F, Permit No. 18329, Ernest Burroughs,  
2   Clarksburg. Staff has received additional information on  
3   this project, and staff is requesting that this should be  
4   pulled from the consent item and the Board should hear it  
5   and then make a decision on it.

6           Those were the changes requested by the staff to  
7   the agenda.

8           VICE PRESIDENT HODGKINS: Okay.

9           MEMBER BROWN: We don't have a quorum,  
10   Mr. Chairman.

11          SECRETARY DOHERTY: We don't have a quorum any  
12   longer.

13          VICE PRESIDENT HODGKINS: No, we don't have a  
14   quorum unless -- what are the rules now? Still takes a  
15   majority of the Board; correct?

16          LEGAL COUNSEL CAHILL: Well, I think it takes a  
17   majority of the voting members.

18          VICE PRESIDENT HODGKINS: Okay.

19          So here's what I would like to think maybe we  
20   might do.

21          In effect, staff is recommending that 7A, 7B, 7D,  
22   and 7E be pulled from the consent calendar and that there  
23   be no further consideration of these items at this  
24   meeting.

25          LEGAL COUNSEL CAHILL: Can you repeat those? I

1 think you said four, and there are only three.

2 EXECUTIVE OFFICER PUNIA: 7E is not included,  
3 Butch.

4 SECRETARY DOHERTY: 7E was pulled for information,  
5 and 7F was pulled from consent, for hearing and more  
6 information.

7 VICE PRESIDENT HODGKINS: All right. Can you  
8 explain again why 7E is pulled. What's the purpose of  
9 pulling it?

10 SECRETARY DOHERTY: Pulled for information. And  
11 7F was pulled from the consent for hearing and  
12 information. So the last -- E and F are both pulled for  
13 information.

14 LEGAL COUNSEL CAHILL: And hearing.

15 VICE PRESIDENT HODGKINS: Okay. So both pulled  
16 for information.

17 LEGAL COUNSEL CAHILL: They are pulled from  
18 consent, but they are staying on the agenda.

19 VICE PRESIDENT HODGKINS: Excuse me. I  
20 misunderstood.

21 So 7A, 7B, and 7D would be dropped from today's  
22 agenda and probably continued to the next meeting.

23 EXECUTIVE OFFICER PUNIA: That's correct.

24 VICE PRESIDENT HODGKINS: Okay. Given that they  
25 were on the agenda -- do we have any cards from anybody

1 who might want to speak on any of those items?

2 SUPERVISING ENGINEER FUA: Lorraine, do we have  
3 any cards?

4 STAFF ASSISTANT PENDLEBURY: We put a card on  
5 Ben's --

6 EXECUTIVE OFFICER PUNIA: We have one card from  
7 Ms. Peggy Bohl, but that's related to Item 4.

8 VICE PRESIDENT HODGKINS: Okay.

9 So I just -- since we were going to drop them, if  
10 there was anybody here who wanted to speak, I wanted to  
11 give them the opportunity.

12 LEGAL COUNSEL CAHILL: I notice the consent item  
13 is calendared for 10 o'clock, so it's possible that people  
14 that were interested won't come until 10:00. So it may be  
15 that what we want to do is approve the rest of the agenda  
16 and indicate that you will decide on Item 7 when you get  
17 to it.

18 VICE PRESIDENT HODGKINS: I think that makes good  
19 sense. Okay.

20 So other than the consent calendar, are there any  
21 other changes?

22 SECRETARY DOHERTY: I would like to make a motion  
23 that we approve the calendar, the agenda, with the  
24 exception of Item 7, the consent calendar.

25 VICE PRESIDENT HODGKINS: Okay. We have a motion.

1 Do we have a second?

2 MEMBER BROWN: Second.

3 VICE PRESIDENT HODGKINS: Moved and seconded.

4 Can you call the roll, please, Jay?

5 EXECUTIVE OFFICER PUNIA: Board Member John Brown.

6 MEMBER BROWN: Aye.

7 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie?

8 MEMBER BURROUGHS: Aye.

9 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

10 SECRETARY DOHERTY: Aye.

11 EXECUTIVE OFFICER PUNIA: Vice President Butch  
12 Hodgkins?

13 VICE PRESIDENT HODGKINS: Aye.

14 Item 4, Public Comments. This is the time when  
15 anyone who wishes to speak to the Board about items not on  
16 the agenda is welcome to come forward.

17 We have received one card from Peggy Bohl.

18 MS. BOHL: Good morning, Vice President Hodgkins,  
19 members of the Central Valley Flood Protection Board.

20 It's hard to get used to that after the  
21 Reclamation Board.

22 My name is Peggy Bohl, and I'm a resident of  
23 Clarksburg. I've been asked to come here today to make a  
24 presentation to you regarding concerns that we have, and  
25 we wanted this placed on the record.

1           I mulled over, in my mind, whether I should come  
2   and what I should do. But watching the television in the  
3   past day has been very, very scary, watching the Miramac  
4   River rising, kind of analogous to what could potentially  
5   happen in our little town.

6           I do have some exhibits. And Dave has told me  
7   it's very easy to use. We have been in communication with  
8   your executive director, Mr. Jay Punia, and we really do  
9   appreciate his very prompt response to our concerns  
10   regarding a deep excavation next to the project levee on  
11   the Sacramento River, at River Mile 42.8, right, as  
12   expressed in this letter to the owners of the Old Sugar  
13   Mill, dated January 24, 2008.

14           The excavation is a result of extracting lime and  
15   other materials from an industrial waste pond which is  
16   mapped as such by USGS. The excavation is within 150 to  
17   200 feet from the toe of the levee and has grown  
18   considerably since your people have gone down there and  
19   since the picture was taken in December.

20           As you can see, the excavation is more than  
21   20 feet into the ground, right next to the levee, and it  
22   is in our water table. We believe that waste materials  
23   including tires, industrial waste, and other potentially  
24   toxic waste materials are being removed from this growing  
25   pit.

1           Prior to this excavation in the spring of 2005 --  
2   and this was three years ago when we dealt with the old  
3   Reclamation Board -- an errant, heavy equipment operator  
4   shoed the levee north and east of the recent excavation  
5   with a blade of a bulldozer.

6           As you can see, in this exhibit, a vertical cut  
7   was made deep into a levee slope.

8           As in the next exhibit, a sand lens is actually  
9   weeping out of the side of the levee.

10          In a letter dated July 13, 2005, written to the  
11   Reclamation Board 999, Steven T. Bradley, chief engineer,  
12   wrote a scope of work and urged the repair to this problem  
13   be made as soon as possible.

14          Three flood seasons have now passed, and the sand  
15   is still weeping, and the slope of the levee has not been  
16   restored or brought into compliance with either Army Corps  
17   of Engineers or DWR levee standards.

18          Both intrusions are into or within feet of a  
19   project levee located on an active high energy curve of  
20   the Sacramento River. The river breached this levee in  
21   1907. Critical emergency repairs were made to portions of  
22   the river, face side, of the levee in both 1997 and 2005.

23          And I took this picture when the face fell off and  
24   I wish Assemblywoman Lois Wolk was here today, because  
25   that certainly proves these are nothing but piles of sand,

1 as she so articulately has said.

2 Our concerns are as follows. It is known that  
3 digging next to a levee during the flood season can place  
4 the levee integrity at great risk. Underseepage is  
5 clearly documented far beyond this newly created quarry.

6 On the afternoon of Thursday 11th, 2008, at a  
7 public and regular meeting of the Yolo County Board of  
8 Supervisors, 625 Court Street in Woodland, the following  
9 statements were made by an attorney representing the Old  
10 Sugar Mill: Quote, "There is probably no jurisdiction  
11 that you, Yolo County, have to stop the excavation from  
12 happening, and there is no jurisdiction of a flood control  
13 board over excavation on private property outside of  
14 10 feet at the toe of the levee."

15 And this has been recorded on the streaming video.  
16 I've noted on this what minute, and I will turn that in.

17 The owner of the property has also stated at the  
18 meeting called by Yolo County, in the West Sacramento City  
19 Hall on March 5, 2008, that native soils were not being  
20 removed from the excavation.

21 I believe that this exhibit clearly shows native  
22 soils, sand, and lime mixed with sand being taken from and  
23 stored for sale on the site.

24 When queried as to the hurry of the geotechnical  
25 engineer as stated in the January 24, 2008, letter by



1 Mr. Punia, there was to express commitment to perform the  
2 required actions. There was no commitment to perform the  
3 actions on the letter that was issued by your predecessors  
4 either.

5 This memorandum is written at the request of the  
6 signers of our letter to Mr. Punia, dated January 31,  
7 2008, and I will also include another one of those in this  
8 packet for you.

9 We look forward to your Board to enforce your  
10 orders, assist in rectifying these two matters, and to  
11 alleviate our concerns for life, safety, and property  
12 protection in our small town.

13 Thank you for your attention to this potentially  
14 dangerous situation. Once again, we would like to commend  
15 Mr. Punia for his action, and we urge that this situation  
16 be monitored closely by your Board and written directives  
17 and deadlines previously mandated be met in a timely  
18 manner.

19 I wish I didn't have to come here today and make  
20 these comments, but I certainly appreciate your listening  
21 to me.

22 Thank you very much.

23 VICE PRESIDENT HODGKINS: Questions for Ms. Bohl  
24 from staff on this matter?

25 SECRETARY DOHERTY: How far out did you say they

1 were digging? How far away from the toe?

2 MS. BOHL: I think in Mr. Punia's letter, it says  
3 300 feet. However, we believe the way it has grown, that  
4 it now is closer, and it looks to us, ma'am, as if it's  
5 probably 150 to maybe 200 feet.

6 SECRETARY DOHERTY: Thank you.

7 MEMBER BURROUGHS: I have a question.

8 Thank you.

9 On your last slide, you mentioned that it was for  
10 sale?

11 MS. BOHL: The lime was for sale. They sell the  
12 lime, which we are glad they are removing the lime, and I  
13 guess it's a source of revenue.

14 MEMBER BURROUGHS: Okay. Thank you.

15 MS. BOHL: It's being mined and sold as a soil  
16 amendment.

17 VICE PRESIDENT HODGKINS: Ms. Bohl, as I  
18 understand this, Mr. Punia's issued a letter, and as I  
19 recall, the letter asks the people who are doing the  
20 excavation to conduct an analysis?

21 EXECUTIVE OFFICER PUNIA: That's correct. We  
22 asked that geotechnical engineers should analyze the  
23 situation and report back to us, and we have received the  
24 report at this time.

25 VICE PRESIDENT HODGKINS: Okay.

1           Have you any indication that they are going to do  
2   the analysis?

3           EXECUTIVE OFFICER PUNIA:  Yes.  I think Dan went  
4   through this item and met with the owner, and I think they  
5   were committed to providing this -- Dan may have more on  
6   this.

7           SUPERVISING ENGINEER FUA:  That's correct.

8           The owner, Mr. John Carvalho had hired Nolte  
9   Associates to do the geotechnical investigation, and the  
10  consultant called me last Wednesday and gave me a time  
11  schedule of the study.  They have done the preliminary  
12  survey of the site this week.  And they gave me until June  
13  to complete the geotechnical report.

14          VICE PRESIDENT HODGKINS:  In June, you say?

15          SUPERVISING ENGINEER FUA:  June this year.

16          VICE PRESIDENT HODGKINS:  We expect to receive  
17  that report in June.

18          MS. BOHL:  We had hoped that it would by  
19  March 31st.  There's a lot of snow up there, and you know,  
20  that river gets pretty high.  And I think there's a direct  
21  correlation with the height of the river and, you know,  
22  the level.

23          So we're glad that something's happening, and we  
24  just really want to ensure that it does, and we'll follow  
25  it through until we are sure that we have some life,

1 safety, and property and protection in our town.

2 VICE PRESIDENT HODGKINS: Thank you. All right.

3 Thank you.

4 Any other comments from the public?

5 All right. Item 5, Report of Activities of the  
6 Department of Water Resources.

7 Is Mr. Qualley here?

8 Mr. Qualley's probably in the meeting with the  
9 Corps.

10 EXECUTIVE OFFICER PUNIA: I will recommend that we  
11 can hear the legislative update from Kasey Schimke, and  
12 then we can go back and George will be here for his  
13 presentation.

14 VICE PRESIDENT HODGKINS: Okay. Mr. Schimke.

15 MR. SCHIMKE: Good morning.

16 Kasey Schimke with Department of Water Resources.

17 Last meeting I attended, we talked conceptually  
18 about some as yet unIntroduced legislation regarding flood  
19 protection, technical clean-up bills, how it was  
20 characterized.

21 After that meeting, I think the next week,  
22 legislation was introduced by Senator Mike Michado,  
23 SB1360, and copies of that are being handed out.

24 What I thought I would do is just give a brief --  
25 what is in this legislation and juxtapose that against

1 where the Department, in working with board staff, had  
2 previously identified some concerns with the 2007  
3 legislation related to the Board's activities, and we can  
4 briefly talk about that. And I would be available to  
5 answer any questions.

6 To begin with, on page 3 of the bill, we start off  
7 by just some very basic technical corrections of code  
8 references in the legislation, and some definitions, just  
9 tightening up some definitions.

10 On page -- moving on to page 5, where we get the  
11 first significant change in 8501(b), it simply is  
12 explicitly requiring the Department to prepare, and the  
13 Board to adopt a map, of what is the Sacramento-San  
14 Joaquin Drainage District. And that is being done -- I  
15 believe we aren't scoring that with any potential cost,  
16 because it was part of the SB5, AB5, AB162 activities that  
17 we think were required in the 2007 legislation. This is  
18 just very explicitly pointing that out.

19 So those would be a tool that I think -- we think  
20 is going to be useful for local governments and others to  
21 use in some of the future activities associated with the  
22 legislation that was passed last year.

23 The next few changes -- don't fear all the  
24 strikeouts you see on the page. The items directly below  
25 the strikeouts are those items reinserted with the

1 corrected definitions as such. This is more of a  
2 technical issue, as to how recently enacted legislation  
3 needs to be amended as opposed to anything else.

4 I'm going to turn it over to page 6 of the bill.  
5 And again, you will see a definition of the State Plan of  
6 Flood Control corrected in that.

7 The next -- the next change to the bill that's not  
8 more of a technical and/or definitional changes would be  
9 at the bottom of the bill, in 8551(c) and (d). This  
10 language just is where it discusses the ex officio members  
11 being the chairpersons of the Senate Natural Resources and  
12 Water Committee, and the Assembly -- the chairperson of  
13 the Assembly Water, Parks, and Wildlife Committee.

14 This adds the chairperson of the Senate Natural  
15 Resources and Water Committee or the chairperson's  
16 designee, is how this language is included.

17 At this point, you know, that is -- I'm not sure  
18 of the exact intent of what the language is. DWR is  
19 currently working on formulating an analysis of the bill.  
20 And once we have an approved position on that, the plan is  
21 to speak to Senator Michado, and clearly we would be  
22 working with the two ex officio members of the Board and  
23 having some of those discussions.

24 On to page 7, we then move again into some more  
25 technical corrections to the 2007 legislation. There was

1 an inadvertent inclusion of the two nonvoting members in  
2 the discussion of the board members serving set terms.  
3 This just corrects that, from five to four, and from four  
4 to three, for the four-year and two-year terms as we move  
5 forward.

6           Section 12 of the bill, about the middle of the  
7 page, is again further tightening the definition of quorum  
8 of the board. And going, I think, to your question  
9 earlier, this language would further clarify that it  
10 actually requires a majority of the voting members of  
11 board. So that is just a tightening of the definitions,  
12 is how I would characterize those changes in the  
13 legislation.

14           If we then move to page 8 of the bill, for the  
15 most part, page 8 through the end of the bill, what we are  
16 seeing is the two provisions in the 2007 legislation that  
17 dealt with conflict of interest restrictions and ex parte  
18 communication restrictions of board members.

19           This just clearly explicitly indicates that this  
20 language covers the appointed members of the board, not  
21 the ex officio members, who it's my understanding -- and  
22 you may want to double check that with Board's legal  
23 staff. But it's my understanding that as legislators, as  
24 the ex officio members, they too are covered by conflict  
25 of interest requirements placed on them as part of their

1 public office. So we believe this to be somewhat of a  
2 technical clean-up of that as well.

3 So that is the basis of what is in 1360 at this  
4 point.

5 Previously, the Department, in looking at the sum  
6 total of the flood legislation passed in 2007, had  
7 identified a couple of other concerns as it related to  
8 impacts of the legislation of the board's activities. And  
9 I don't think we are inconsistent with where Board staff  
10 are now. And something that was discussed at the last  
11 Board meeting -- but the evidentiary hearing process and  
12 the fact that current law, as of January 1st, requires an  
13 evidentiary hearing for every item requiring a permit.

14 And when the legislation was being discussed and  
15 debated at the end of the session last year, that was  
16 obviously a concern, given the workload issue. So that is  
17 still a concern, and we want to make sure we can work this  
18 through.

19 I know the last time we were here we talked about  
20 some of the actions that the Board is taking as a stopgap,  
21 so to speak, using the consent calendar. But these are  
22 some issues that were still looking at and trying to  
23 figure out, would that also be something that we would  
24 like to see as a change.

25 One of the other items I think we had identified



1 and dealt with the ex parte communication, and for lack of  
2 a better term, I would say perhaps putting bookends --  
3 when does it start, when does -- what type of an action  
4 triggers the need for a communication to become ex parte?  
5 And at what point does it end.

6 I think that was how DWR's legal staff had  
7 originally looked at that and said, we need to bookend  
8 this somehow so that there is a clearly defined -- so no  
9 one is confused as to what is characterized as what.

10 Those last two issues, regarding evidentiary  
11 hearings and ex parte communications, are not covered  
12 currently in this legislation.

13 And as I said, DWR does not have an official  
14 position on the bill yet. We're hoping to formulate that  
15 here very quickly and working with the Board's staff and  
16 legal staff. I hope to then be able to, you know, work  
17 together and craft some discussions, I guess, as we move  
18 forward with Senator Michado.

19 So that is the long and the short of it. I don't  
20 know if you have more specific questions regarding  
21 anything I have said or perhaps that I have not said.

22 SECRETARY DOHERTY: Mr. Schimke, I believe we were  
23 told that if we talked to a party, well, for instance on  
24 the Sutter Bypass, all I needed to do was come here and  
25 say, "Oh, I talked to Loretta Dean concerning Sutter

1 Bypass, so that everybody was apprised of the fact that I  
2 had done so."

3 MR. SCHIMKE: And honestly, I would defer to your  
4 legal staff on those -- on this specific -- what is  
5 necessary with regard to disclosure of communications. I  
6 wouldn't want to start delving into the legal definitions  
7 and suggestions.

8 But in looking at it, I guess what we had  
9 identified, again, last fall, and this may have changed,  
10 was providing, I guess, some additional structure as to  
11 what type of communication does it require to be a  
12 communication on an issue directly before the Board or  
13 potentially -- these were questions that our legal staff  
14 had had, and we would like to work through.

15 LEGAL COUNSEL CAHILL: Yeah, I think our hope  
16 would be the legislation would clarify when it begins and  
17 what type of action it applies to. But once it does  
18 apply, then it's not just a matter of disclosure. It's  
19 our opinion that once it does apply, those communications  
20 are prohibited. And you only disclose if they  
21 accidentally occur.

22 VICE PRESIDENT HODGKINS: And when they do  
23 accidentally occur, then the nature of the conversations  
24 becomes part of the record; is that correct?

25 LEGAL COUNSEL CAHILL: Yes. It should be

1 disclosed on the record with enough detail that anyone who  
2 would want to counter it would have an opportunity to do  
3 so.

4 VICE PRESIDENT HODGKINS: Okay. And I would like  
5 to say a little bit more about working through legislation  
6 when it affects the Board. I think working with  
7 Mr. Schimke and the Resources Agency, in trying to provide  
8 information through DWR's analysis to the administration  
9 that would allow the administration to give us some  
10 guidance in formulating the position is the way things  
11 need to happen.

12 I mean, we are a part here of a larger team that  
13 includes the administration as a whole, and so we need to  
14 be careful in our discussions of these matters, not to  
15 create a situation where if there were a difference of  
16 opinion between right now, it's the executive committee  
17 staff and our legal counsel and the administration, it  
18 becomes public knowledge that there's difference and that  
19 there is the potential to, you know, have that be  
20 misinterpreted as the legislation moves forward.

21 So the upshot of all of this is to actually  
22 discuss the details of what we would propose before it has  
23 been through the process, which has been reviewed, and we  
24 have the benefit if the administration's position is  
25 inappropriate.

1           I think Kasey has given you a pretty good idea  
2 here, that we are working on trying to get bookends, as he  
3 terms it, on when ex parte starts, and specifically what  
4 it applies to, and also some effort into clarifying that,  
5 in fact, the way we are proceeding in terms of evidentiary  
6 hearings is consistent with the legislation.

7           And we're hopeful that that puts other  
8 administration concerns -- puts us in a position that we  
9 can disclose to the Board.

10           MEMBER BROWN: Mr. Chairman?

11           MR. SCHIMKE: If I may just add, I think you used  
12 the right term this -- a larger team. And I think that's  
13 how we're viewing this, is we're working -- you mentioned  
14 the Resources Agency, and DWR is definitely more than  
15 willing and eager to continue working with the executive  
16 leadership team and staff.

17           VICE PRESIDENT HODGKINS: It's the way it simply  
18 has to be.

19           MEMBER BROWN: Mr. Chairman?

20           Mr. Schimke, it sounds very similar to the  
21 Porter-Cologne Act. I'm sure you are familiar with that  
22 for ex parte contact and the rules of evidentiary  
23 hearings.

24           Maybe you can take a page out of that book and see  
25 if it complies.

1           MR. SCHIMKE: We definitely will be looking at  
2 several options, and that's a good suggestion.

3           MEMBER BROWN: The Porter-Cologne, of course,  
4 governs the State Water Resources Control Board.

5           VICE PRESIDENT HODGKINS: We have had Teri  
6 involved very much in helping us to suggest what might be  
7 done here. And she's familiar with Porter-Cologne and the  
8 State Water Board.

9           Thank you. Any other legislation issues at this  
10 point?

11          MR. SCHIMKE: At this point, I wasn't going to  
12 bring up any other legislation. There doesn't appear to  
13 be any strong significant flood specific legislation.

14          There are a number of issues out there relating to  
15 the delta as a whole and governance of the delta. I think  
16 we would like to take a little more time and get a better  
17 framework of those bills and maybe come and present those  
18 to you at a future hearing, a future meeting.

19          And in addition to that, you know, we may end up  
20 having a bond discussion at some point which would  
21 obviously involve, we would assume, some additional  
22 funding relating to flood protection, flood management  
23 activities.

24          And so at that point, we would be happy to bring  
25 that information. But at this point, I don't have

1 specifics to go over it.

2 VICE PRESIDENT HODGKINS: Thank you very much, Mr.  
3 Schimke.

4 SECRETARY DOHERTY: Mr. Chairman, it should be  
5 noted that Emma Suarez is in attendance at this point.

6 VICE PRESIDENT HODGKINS: Thank you. I hope the  
7 record will so reflect.

8 We are on Item 5, Report of Activities of the  
9 Department of Water Resources.

10 We just completed the legislative update, and we  
11 would like now, George, to have you walk us through the  
12 activities of the Department.

13 Congratulations, by the way. I understand you are  
14 the new Director of Flood Management.

15 MR. QUALLEY: And not quite a director. Chief of  
16 the division. But thanks very much for the kind words.

17 I apologize for not being here when my name was  
18 called. I was upstairs finishing some things, and of  
19 course this would be the day when your public comment was  
20 shorter than it sometimes is. So I apologize for that.

21 Before I get into the remarks about the past  
22 month, I just want to give you a heads-up to looking  
23 forward to next month, your April 18th meeting.

24 You know, I'm sure you are aware that DWR has been  
25 developing a strategic plan for the FloodSAFE initiative,

1 and we're just getting to the final stages of completing  
2 the internal review of that, and we'll soon be prepared to  
3 discuss that plan with a variety of stakeholders,  
4 including your Board, Corps of Engineers, and others.

5 And our intent is that this plan contain a broadly  
6 supported set of goals and objectives related to improving  
7 integrated flood management in California over the next 10  
8 to 20 years. We want to take a fairly long look out, and  
9 all the major partners will be working together on that.

10 We would like to present an introduction to that  
11 at your April 18th Board meeting to really make you, I  
12 think, probably the first that will be discussing in a  
13 public forum.

14 VICE PRESIDENT HODGKINS: Yeah, I think that's an  
15 important matter for folks to understand that at the next  
16 meeting, as I understand it, the Department will be  
17 presenting their strategic plan. It will be available in  
18 its draft form prior to the meeting for the public to  
19 review.

20 And so in addition to commenting directly to the  
21 Department, certainly this Board would be interested in  
22 hearing comments from its stakeholders on that strategic  
23 plan at that meeting in April.

24 MR. QUALLEY: Okay.

25 VICE PRESIDENT HODGKINS: Okay?

1           Thank you.

2           MR. QUALLEY: As in the past, I will just  
3 highlight some things here and there through the report.  
4 I won't necessarily try to cover every item in the  
5 interest of item. But certainly, I would be pleased to  
6 answer questions on any of the items or linger longer on  
7 any that you have particular interest in.

8           As far as the water conditions, we have improved  
9 conditions greatly since back in January. Things were  
10 looking pretty bleak at that point. But we're now at a  
11 hundred percent of average to date for precipitation and  
12 about 60 percent of average to date for runoff.

13          And statewide, April through July, snow melt  
14 runoff is about 95 percent, almost normal, with no large  
15 differences between regions. That's a bit unusual.  
16 Usually there's a variance among the state but all parts  
17 of the state have benefited from the precipitation.

18          The northern station -- Sierra 8-Station index is  
19 about 90 percent of the seasonal average. And, you know,  
20 basically things are looking as if it's going to be a  
21 normal year. Of course, there is nothing normal. They  
22 are either above average or below average. There isn't  
23 even a definition for normal in our criteria.

24          But one thing to remember is that we started out  
25 very dry. And an average year isn't going to bring us



1 back to bounty in the reservoirs, because storage in the  
2 major reservoirs is still well below average. So  
3 certainly a normal year is better than what it looked like  
4 it was going to be when we started out.

5 We're still persisting with La Niña conditions and  
6 indicate this La Niña is the strongest in eight years.  
7 And as I've mentioned in the past, one of the unique  
8 aspects of La Niña is, you can really get some extreme  
9 conditions. We had the storm in January that was kind of  
10 a lollapalooza as far as wind and fairly intense rainfall.  
11 But the years that we've gotten really big floods, '86 and  
12 '97, they also have been La Niña years. So we can feel  
13 fortunate that we didn't have one of those really extreme  
14 events in the last flood season.

15 Couple of quick comments to update you on an item,  
16 this abandoned pipe issue in maintenance area 9. The  
17 Board had requested that the pipe be abandoned, in the  
18 fall of 2007. But we had to go through some permitting  
19 steps and got to the point where it wouldn't have been  
20 safe to proceed with that work in the middle of flood  
21 season. So the work is going to be underway.

22 Sacramento Maintenance Yard will be able to take  
23 care of that in a day or two once they actually get the  
24 work underway. So that will be taken care of in the  
25 coming year.

1 SECRETARY DOHERTY: Pardon me, sir. Is that the  
2 abandonment project that you are talking about?

3 MR. QUALLEY: That's correct.

4 SECRETARY DOHERTY: Oh. And the owners are billed  
5 for this.

6 MR. SWANSON: I think we're going to pay for it  
7 out of maintenance area 9.

8 THE REPORTER: Who's talking?

9 MR. SWANSON: Keith Swanson. Chief of the Flood  
10 Maintenance Office.

11 Our current plan is to use maintenance area 9  
12 funds to take care of the work.

13 SECRETARY DOHERTY: But if it's owned by somebody  
14 and they refuse to assess the condition, why should you  
15 have to bear the brunt of it?

16 MR. SWANSON: We would be happy to work with Legal  
17 to see if the state has the ability to recoup the costs.

18 SECRETARY DOHERTY: I was just curious about it.

19 MR. SWANSON: At this point in time, we're  
20 interested in getting work done because of the public  
21 safety issue.

22 It's been my experience, it's been very cumbersome  
23 to try to recoup money. But we'll work with Legal to see  
24 if that's a possibility and see if, you know, it makes  
25 good sense for us to go after them. It might be that we

1 spend more money than we have the potential for recovery.

2 SECRETARY DOHERTY: Yeah. Thank you.

3 MR. QUALLEY: Sometimes it's a matter of tracking  
4 chain of ownership to find somebody that has the financial  
5 wherewithal and being able to tie the responsibility to  
6 them. But it's a fair question, and we'll look into it.

7 Levee Repairs Branch, this is a reoccurring item  
8 that we have in the report. And again, I won't go into a  
9 lot of detail. They have been proceeding with a whole  
10 variety of levee repairs.

11 The Ayers Associates, they have completed their  
12 report for alternatives for repairs for the priority sites  
13 that were identified last fall. And there are eight of  
14 these sites that were -- really nothing impeding us moving  
15 ahead with those repairs. So we'll be definitely doing  
16 those during the 2008 season.

17 On the San Joaquin River, there have been a number  
18 of sites, some of which are still remaining from the 2006  
19 storms and damage that took place. And they have been  
20 conducting geotechnical field investigations, and we are  
21 working with the Corps of Engineers on sites on the  
22 Chowchilla Bypass to have them participate in the funding  
23 for those repairs.

24 And on PL 84-99 assistance, there's a number of --  
25 only six of the order 2 sites are left, and a large number

1 of the less severe, orders 3, 4, and 5 remain in place to  
2 be prepared to -- continue to work to do those.

3 Levee Evaluations Branch, they are continuing to  
4 work on the evaluations of the 350 miles of urban levees.  
5 And for the progress over the last month, since the last  
6 reporting period, they are working with a variety of  
7 entities in the urban areas to finish those evaluations.

8 We've broken it down by the north, central, and  
9 south area to kind of give a progress report on the status  
10 of the reports in the various basins. So they are moving  
11 forward as quickly as they can on those evaluations and  
12 developing the various reports that come out of those  
13 evaluations.

14 Project Development Branch. We last updated you  
15 on those projects in the December report. And so these  
16 updates cover the activities since then. So some of those  
17 things, like for example, on the joint federal project at  
18 Folsom, Robert Charney gave you a presentation last month  
19 that was very thorough. Some of these items will be  
20 familiar, because they are some of the things that Robert  
21 briefed you on last month.

22 That project is moving along and really benefits  
23 from extraordinary cooperation amongst the federal state  
24 and local partners. It's -- none of us have ever seen  
25 anything like that before, and also tremendous support

1 from Congress and others for funding as well as our state  
2 legislature.

3 American River common features work is continuing  
4 on various elements of that. They were able to lend a  
5 construction contract for raising 340 feet of levee in the  
6 Mayhew area. There's been an expansion in what was  
7 originally termed the Natomas General Reevaluation Report  
8 and now includes the greater Sacramento region as well as  
9 the pocket area. And it's being called the Common  
10 Features GRR. And that's scheduled for completion in  
11 2010, I believe.

12 We're continuing on South Sac streams. In the  
13 areas outside of the immediate Sacramento area, West  
14 Sacramento, there's a couple of levee slips that the Corps  
15 is going to be proceeding on repairing, and we're also  
16 working on the general reevaluation report for West  
17 Sacramento.

18 We had tried to get that to be done under the  
19 authorization of the project cooperation agreement, which  
20 would have been a couple of less steps in the process to  
21 get the study done. But it was determined by the Corps  
22 that it needs to proceed under the feasibility study  
23 guidelines. So it will take a little longer to get that  
24 done, but we will get there.

25 Yuba River Basin Project. The GRR, the general

1 reevaluation, is proceeding on that.

2           And with regard to the Marysville Ring Levee, this  
3 indicates that we were looking for authorization to  
4 initiate design and construction simultaneously. Just  
5 yesterday, we did get word from the assistant secretary of  
6 the Army that they have approved that design and  
7 construction to proceed concurrently with the general  
8 reevaluation report.

9           The bad news is, they did not, at this time,  
10 approve the crediting in advance of the GRR. They are  
11 indicating that the GRR needs to be completed to determine  
12 which elements of that could be used for federal crediting  
13 towards Marysville levee. So we still have more  
14 discussions to have with the Corps on that.

15           Floodplain Management Branch.

16           Well, before I go to floodplain management, we  
17 don't have a written item on early implementation  
18 projects. But I just want to mention, as you are all  
19 aware, the Three Rivers Feather River levee setback, the  
20 decision document has been approved by the director on  
21 that project, and we expect the funding agreement to be  
22 executed fairly soon. It's ready to go. And so we're  
23 moving towards executing that.

24           Director decision memos for the other three E-I-P  
25 projects will be forwarded to executive sometime next

1 week.

2 MEMBER BROWN: George, you skipped the Orestimba  
3 Creek Study.

4 What's coming off there?

5 MR. QUALLEY: Well, there's been a lot of interest  
6 by our congressional representative, Mr. Cardoza, and the  
7 state representatives Mr. Denham on that, and we've had a  
8 number of meetings with the Corps.

9 I know there's a meeting coming up on  
10 April 15th in Newman. There's going to be a series of  
11 workshops. There was one last November, and there will be  
12 some additional ones in June and July.

13 The Corps is proceeding on the feasibility study,  
14 and there's two -- we started with a number of  
15 alternatives, and there's two primary alternatives, at  
16 this time -- a downstream alternative that is called the  
17 levee system alternative, which is essentially a Chevron  
18 levee around the town of Newman, and then some  
19 improvements to the channels and some small bypasses in  
20 that area;

21 The other alternative is the dry dam alternative,  
22 which is favored by the local interests. And what the  
23 Corps is doing right now, they are proceeding to develop  
24 sufficient information on both those alternatives so that  
25 by September, by the end of September, they will make a

1 selection of a national economic development plan. And  
2 then depending on which of those plans is determined to be  
3 the NED, then the Department will decide on how they want  
4 to proceed.

5           It is possible for the nonfederal interest to  
6 choose to pursue the locally preferred plan, which may not  
7 be the NED if they pay the differential cost between the  
8 two alternatives. So the focus right now is to complete  
9 the feasibility studies so we got all the information  
10 available to make the comparison between alternatives.

11           MEMBER BROWN: That's an excellent dam site that  
12 was being considered at the time of the Los Banos Grandes  
13 on a much smaller scale, of course, but for off-stream  
14 storage as well as flood control.

15           MR. QUALLEY: Yeah. And everything comes down to,  
16 you know, cost benefit analysis, and certainly that's  
17 where the Corps is coming from on their NED plan. So we  
18 need to see what the total costs are, not only of  
19 construction but of mitigation costs, acquisition costs of  
20 the land.

21           MEMBER BROWN: But you will be studying that for  
22 off-stream storage as well as flood control?

23           MR. QUALLEY: Not on this project. This is  
24 strictly a peak flow detention dam that's being looked at.

25           The local interests -- that actually has been



1 mentioned by the local interests, even at our last  
2 meeting. And my comment to them was to -- it's very  
3 complex to try to get a flood control detention dam in  
4 place. To add water supply to that, it increases the  
5 complexity of getting through all the various approvals  
6 and authorization process, tremendously.

7 MEMBER BROWN: Also increases the payment capacity  
8 of the project.

9 MR. QUALLEY: Yeah. Yeah. It would require a  
10 re-scoping of the whole thing.

11 I know the local interests, they would really like  
12 to see a study, you know, get done within the next couple  
13 of years so they can proceed through the project.

14 And that would lengthen the time considerably to  
15 shift either of --

16 MEMBER BROWN: We contacted with Boyle  
17 Engineering. They did a study on that 15, 20 years ago  
18 for off-stream storage. A lot of that work, geotechnical  
19 work, and such, has been done that could save you a lot of  
20 money on that.

21 MR. QUALLEY: Well, my experience, I spent a lot  
22 of hours on the Auburn Dam when we were trying to move  
23 forward with the detention dam on that. And they're --  
24 it's almost gotten to the point, quite honestly, where the  
25 engineering challenges related to these types of projects

1 are almost incidental. We can build anything. It's not  
2 that big of a deal to design a safe structure.

3 But the other issues that are involved, especially  
4 with water supply, this is a lot of stakeholders, a lot of  
5 steps to go through.

6 And, you know, I'm not saying it's not worth it to  
7 pursue those types of things, but it does take longer.

8 And that project, as formulated right now, the Corps is  
9 pursuing it as a detention dam.

10 MEMBER BROWN: Just a suggestion.

11 MR. QUALLEY: Yeah. That's good.

12 And we're the Department of Water Resources.  
13 We're certainly interested in water supply opportunities,  
14 wherever they exist, and we try to be mindful of that.

15 MEMBER BROWN: Thank you.

16 VICE PRESIDENT HODGKINS: George, is that a  
17 typical Central Valley project that we're involved in a  
18 partnership between the Board and the Corps, if it goes  
19 forward?

20 MR. QUALLEY: It's not quite typical, because in  
21 this case, the Stanislaus County is actually the official  
22 nonfederal sponsor.

23 In the original agreement, they wanted it to be  
24 that way so the State, through the Reclamation Board, was  
25 a cost-sharing partner when the feasibility study was an

1 issue.

2 And as the study has progressed, actually  
3 Stanislaus County has provided additional money towards  
4 the study, and that was during a period when the state  
5 didn't have any general funds at all to contribute.

6 So Stanislaus County has been really the lead  
7 non-federal sponsor on that. And Flood Management staff  
8 have participated in all of the project development team  
9 meetings and all those discussions.

10 VICE PRESIDENT HODGKINS: Okay.

11 Is it kind of a project that assuming the  
12 feasibility finds a locally preferred plan and it's  
13 authorized, that then they would want the Board to be a  
14 partner in? Or would they work directly with FloodSAFE  
15 and try and get state funding? Any thoughts on where  
16 that's going?

17 MR. QUALLEY: That hasn't been determined yet,  
18 what the next step would be. The focus right now is  
19 trying to nail down the true costs of both of the  
20 alternatives.

21 And I know the locals believe that there's not a  
22 real big differential in cost between dry dam alternative  
23 and the downstream alternative, once all the different  
24 costs are factored in. We just need to see how that comes  
25 out.

1           VICE PRESIDENT HODGKINS:   Okay.   Thank you.

2           MR. QUALLEY:   Our Floodplain Management Branch.  
3   We've got going on the lidar surveys for the mapping, and  
4   that was important to get started earlier in the season  
5   because they want to beat the leaves.   As soon as, you  
6   know, everything starts to blossom out, you don't get as  
7   good of a reading from the air.   So that work has been  
8   underway, and they've got a lot of the territory to cover  
9   to get these aerial photos.

10           Flood Operations Branch.   I asked them to kind of  
11   give an update on some of their activities.   And there's a  
12   number of different sections, and they have really done an  
13   excellent job of laying out the types of things they were  
14   doing.

15           Again, in the interest of time, I'm not going to  
16   go through each individual one.   But they do have a number  
17   of distinct sections that are working on various aspects  
18   of preparing for floods.   And we always think of the Flood  
19   Operations Center as being the hub of activity during the  
20   actual flood event.   But the other support activities to  
21   have the data systems in place and all of the other  
22   support and training and everything else is very  
23   significant.   And it keeps them very busy through the dry  
24   season.

25           And with respect to the data part, we're getting a

1 couple of gigantic servers for the CDEC system to really  
2 upgrade that, because there's been a lot more use, a lot  
3 more load on that system.

4           And one other comment on Eureka Flood Center, Dave  
5 Bernard has been our flood center manager for, gosh, 25  
6 years, I think, and he's going to retire this month. So  
7 we're wishing him well. He's done a great job up there  
8 over these decades. And the person that runs that  
9 organization is really a significant member of the  
10 community because of the information that comes out of  
11 there is very significant to the local people, the local  
12 agriculture, and they get into some unusual-type exercises  
13 as well.

14           In fact, on March 26th, they are going to have a  
15 tsunami experience because, of course, Crescent City was  
16 devastated by a tsunami in 1964, and that's one of the  
17 types of floods that they monitor very closely there.

18           I'm going to skip down to Flood Project Integrity  
19 and Inspection Branch. And I'm pretty much going to turn  
20 this over to Jeremy Arrich to brief you on the results of  
21 the 2007 fall inspections.

22           We did last fall make changes to the way we do the  
23 inspections, the types of things we're looking for, and  
24 the way we do the ratings in response to the Corps of  
25 Engineers with the additional requirements that they came

1 out with, with respect to National Levee Safety Program.  
2 And there's an attachment on your presentation that  
3 includes the details and tables that Jeremy will walk you  
4 through.

5 So with that, I will turn it over to Jeremy unless  
6 you have questions on any of the previous information.

7 MEMBER BROWN: I have one more question.

8 Silver Creek, which is, what, two or three water  
9 sheds north of, I think, Orestimba. Have you done any  
10 studies on that? That watershed has caused a tremendous  
11 amount of damage to the valley in years past.

12 MR. QUALLEY: I'm not familiar with Silver Creek.  
13 I haven't heard of any studies. Is it upstream of a  
14 community?

15 MEMBER BROWN: Yeah. You know, where the Jones  
16 Ranch is, the old Joneses? They are at -- in the Panoche  
17 Water District.

18 MR. QUALLEY: Oh, is that right? So it would be  
19 upstream -- drained to Little Panoche Reservoir?

20 MEMBER BROWN: I think it's upstream of that. In  
21 any case, it's deposited a lot of silt along the  
22 California aqueduct. And I think it costs the Bureau of  
23 Reclamation, I once was told it was about a million  
24 dollars a year on the average to clean up the silt.

25 MR. QUALLEY: Oh, yeah. That's tremendous.

1           MEMBER BROWN: It is part of it, yes.

2           MR. QUALLEY: Yeah. The state water project side  
3 of the house has been working for years. In fact, in the  
4 '70s, when I was in the Division of Operations and  
5 Maintenance, I did some work around Pasajero so it's been  
6 a long-term project. And they have been getting to the  
7 point of some solutions to implement. But I will  
8 certainly follow up with the folks that are working on  
9 Pasajero.

10          MEMBER BROWN: Maybe we have the wrong name. It's  
11 Silver Creek. It's been several years since I've been up  
12 there.

13          MR. QUALLEY: I know there's a Cantua Creek.

14          MEMBER BROWN: By the old Placer Herald, that's  
15 correct.

16          MR. QUALLEY: I will go check on that.

17          MEMBER BROWN: Thank you, George.

18          MEMBER SUAREZ: Mr. President, I have a quick  
19 question.

20          Hi. Back in January, when I believe you had done  
21 a presentation that gave us an update, and at that time we  
22 had talked about the new legislation that had come into  
23 effect and that legislation included a number of deadlines  
24 regarding reporting requirements that the Department had  
25 to the Board.

1           And at that time, I had asked if you could build  
2   into your report, from this point on, the deadlines and  
3   where you were in developing that information, who that  
4   contact person was, that was the lead on that. And I'm  
5   not seeing it.

6           So I just kind of wanted to put it back on the  
7   table, because I think it will be the easiest way for us  
8   to keep track on how we're progressing on some of those  
9   things.

10          MR. QUALLEY: I was planning on starting that with  
11   the next month's speech. What we've done in the  
12   intervening time, we put together a spreadsheet that kind  
13   of listed out all of the different actions that were  
14   necessary, some of which are Department of Water Resources  
15   responsibilities, some of which are local agency  
16   responsibilities.

17          And then, in fact, just earlier this week, we had  
18   a meeting to -- you know, we made an initial shot to  
19   move -- some of them were really obvious and who was  
20   responsible for them, like anything to do with flood plan  
21   mapping, and we know that was Ricardo's stuff, and he was  
22   quite aware of that. And he has been working on it since  
23   the legislation was passed.

24          But long story short, we've kind of fine-tuned  
25   that spreadsheet, and my plan was to share that with the



1 Board and discuss it at the next meeting. And update it  
2 at intervals that are appropriate. Monthly may not be  
3 necessary, but we want to do that on an interval or we  
4 can -- whether that's appropriate for the activities that  
5 go on.

6 A big help in the whole process -- I don't know if  
7 Kasey is still here or not. But Kasey Schimke's office  
8 also put together kind of a summary of some of the  
9 pertinent points in all the legislation, because there's  
10 such a number of bills, it's hard to wade through all of  
11 that legislation and sorting it out. And he prepared kind  
12 of a summary that was helpful to us. So that's also been  
13 helpful on guiding us on this.

14 MEMBER SUAREZ: I think it would be helpful for us  
15 if, again, you would somehow organize -- at least have one  
16 page in the report that identifies the code section, the  
17 deadline, who the contact person is, and when it's  
18 appropriate, to provide us an update on that particular  
19 item.

20 MR. QUALLEY: That's probably the best way to do  
21 it, not to attempt to report on everything every month,  
22 but the things where there's been some significant change  
23 or there's some significant deadline that's coming close.

24 MEMBER SUAREZ: So Mr. Punia, if you could follow  
25 up on that, I would appreciate it.

1 EXECUTIVE OFFICER PUNIA: Yes, I will.

2 MR. QUALLEY: Jeremy?

3 MR. ARRICH: Good morning, Board Members.

4 Jeremy Arrich, A-R-R-I-C-H, chief of the Flood  
5 Project Integrity and Inspection Branch.

6 Thanks for giving me a little bit of time today.

7 I'm not sure how much time I have, but I have a  
8 short presentation I would like to step through to try to  
9 explain some of the information that was in your board  
10 package related to the fall 2007 levee inspection results  
11 in the annual maintenance ratings.

12 I tried to incorporate more pictures than words,  
13 so some of the slides have a few more words than others.

14 But we'll start with the inspection criteria that  
15 we used in the fall 2007 levee inspections. We  
16 incorporated Corps of Engineers criteria for all  
17 categories that we inspect except for trees, other  
18 vegetation, and certain encroachments in the system.

19 The -- with respect to vegetation, the Department  
20 used interim vegetation criteria that was developed last  
21 fall, prior to the inspections, which I think we've gone  
22 over with you in the past. But as a reminder, the  
23 vegetation criteria requires open visibility and access  
24 for maintenance and flood fight activities. So we expect  
25 the land side, from the toe easement, up the slope, across

1 the top of the levee, and down the 20 feet of the slope  
2 length on the water side to be clear, visible and  
3 accessible. So trees and vegetation can exist, but it has  
4 to be trimmed up to a certain extent so that we can see  
5 around it and access for flood fights.

6 We documented and rated encroachments in two  
7 different ways. Encroachments that threaten levee  
8 integrity or those that have no business being on the  
9 levee, such as pruning piles or other debris piles that  
10 are left on the side of the levee or in the easement.

11 The second type of encroachment that we indicated  
12 was partially obstructing or completely obstructing.

13 We documented and rated these, but we did not  
14 include these types of encroachments in the overall  
15 maintenance ratings.

16 These are things such as residential  
17 encroachments. Maybe you have a fence that's permitted,  
18 but there's ivy and vegetation growing on the fence so we  
19 can't see through it, past the -- into the 10-foot  
20 easement. So things like that would be considered  
21 partially or completely obstructing encroachments that are  
22 oftentimes, at least currently, beyond the authority of  
23 the local maintaining agencies to actually correct in a  
24 timely manner. So that's another issue that we'll be  
25 addressing in the future.

1           MEMBER BROWN: Are these all grafting sites, or  
2 are you talking about some planted material?

3           MR. ARRICH: I'm sorry. Could you repeat the  
4 question?

5           MEMBER BROWN: Are these grafting sites you are  
6 talking about, or are they plants that have been planted  
7 there for soil stabilization? What's the origin of them?

8           MR. ARRICH: For the partially and completely  
9 obstructing encroachments, a lot of them are vegetation  
10 encroachments. There's a mix. Some of them are naturally  
11 occurring and others are planted by landscaping or other  
12 means. Some are permitted; some are not permitted.

13          MEMBER BROWN: For what purpose? For ornamental  
14 or for soil stabilization?

15          MR. ARRICH: Oh, most of them would be for just  
16 ornamental residential landscaping.

17          MEMBER BROWN: On the water side, I mean.

18          MR. ARRICH: Oh, on the water side? In some  
19 cases, there is planted vegetation for stabilization if it  
20 was a repair site of some sort.

21          MEMBER BROWN: None for ornamental though, I hope.

22          MR. ARRICH: Not that I'm aware.

23                So this just shows the picture -- we have four  
24 schematics that indicate the vegetation criteria.

25                But as I indicated, here along the land side, up

1 over the top of the patrol road, and 20 feet of slope  
2 length is what we expect to be clear, visible, and  
3 accessible. Trees need to be trimmed up and thinned out,  
4 and other vegetation needs to be dealt with.

5 Beyond the 20 feet, we're currently allowing as  
6 much vegetation as exists to remain, and this is an  
7 interim criteria. We don't know what the future criteria  
8 may be here, with regard to the 20-foot or the allowance  
9 of other vegetation on the water side. But it's primarily  
10 to maintain the existing environmental resources and  
11 habitat that exists on the water side of the levee.

12 This shows a picture of -- I believe this is MA9,  
13 looking upstream, of a levee that we would rate as  
14 acceptable. There are trees on the levee slope. Even  
15 further down into the picture, you see some trees that are  
16 up closer to the crown of the levee. And they are thin  
17 enough so that we can access around them, and if we need  
18 to lay plastic here in a flood fight, we can do so.

19 And similarly, on the land side, most of those  
20 trees are trimmed up. There's quite a few large trees.  
21 However, they are maintained.

22 And this is clearly an unacceptable levee. I'm  
23 not even sure which side is the water side and which side  
24 is the land side. But the crown roadway looks clear up to  
25 the shoulder, and then beyond that, there's dense

1 vegetation and trees throughout.

2 To get into the results of our inspections, we  
3 looked at the entire system, all 1600 miles, and we looked  
4 at each category that we rate for. We rate for  
5 vegetation, trees, encroachments, animal control, erosion,  
6 and there's about 12 different categories that we inspect  
7 and rate.

8 What this chart shows is, this basically shows the  
9 minimally acceptable and unacceptable items that we rated.  
10 So as our inspectors go out and they see a patch of trees  
11 or issues with animal control, they document it and they  
12 provide a rating based on the criteria that we're using.

13 The first two blue bars here show about 32 percent  
14 of the total levee miles were rated minimally acceptable  
15 for vegetation and trees. I lumped that into one category  
16 here. About 6 percent of the levee miles were rated  
17 minimally acceptable for encroachments. And again, that  
18 does not include those partially obstructing or completely  
19 obstructing encroachments that I mentioned. And about  
20 12 percent of the miles rated minimally acceptable for  
21 animal control.

22 The first couple categories -- the trees,  
23 vegetation, and encroachments -- mostly have to do with  
24 visibility issues. So the majority of the deficiencies  
25 that we see mostly have to do with visibility and access

1 on the levee slopes. So we're just trying to get that  
2 stuff cleaned up.

3 Moving on to the annual maintenance ratings, this  
4 is kind of a ten-year history of what our inspection  
5 reports have shown over the years. If we look at the 2006  
6 bar, there was about four LMAs, local maintaining  
7 agencies, rated as unacceptable.

8 This last fall, we have rated 64 of the local  
9 maintaining agencies as unacceptable. That's their  
10 overall maintenance rating that we apply.

11 25 of the agencies received acceptable ratings,  
12 and 18 received minimally acceptable ratings.

13 So you are probably asking yourself, why is there  
14 an increase in the number of ratings? As we're all aware,  
15 Hurricane Katrina raised national awareness of impacts of  
16 flooding and the need to improve public safety.

17 As a result, the Corps of Engineers initiated a  
18 National Levee Safety Program. Part of that levee safety  
19 program is to improve the maintenance of the system, so  
20 they have called for more rigorous enforcement of the  
21 levee maintenance standards across the nation. And we've  
22 been working with the Corps on these issues, trying to  
23 improve our inspection program over the past two years,  
24 both to improve consistency in the way we complete the  
25 inspections and do the annual ratings. We're working to

1   comply with the Corps' inspection programs and also to  
2   assist locals in meeting these national standards that are  
3   in front of us.

4           Some of the improvements we've made -- we've  
5   improved training to our levee inspectors; we have  
6   increased communication with local maintaining agencies by  
7   notifying them ahead of inspection program changes;  
8   notifying them when we learn of new Corps of Engineers'  
9   policies; we have invited them to ride along with us  
10   during our levee inspections. So we're really reaching  
11   out to the LMAs to increase their awareness and their  
12   understanding of what we expect of them in terms of  
13   maintenance.

14           We've incorporated engineering oversight into our  
15   inspection program, not so much in the field, yet, but in  
16   the office and in the analysis of the results and the  
17   development of databases and the inspection protocols.  
18   And that goes along with the better tools. We've  
19   developed a new database that we are implementing this  
20   spring, and we'll continue to do that.

21           The newest change is a new rating methodology that  
22   we implemented this fall, to get to the number of 64  
23   districts with -- that are rated unacceptable. Another  
24   reason, the increase in ratings is we simply had higher  
25   expectations. Improved maintenance is a high priority for



1 the Department, and we want to continue to encourage  
2 maintainers to allow us to see and access that levee so  
3 that we can expect and react during flood events.

4 I want to quickly step through the new procedure  
5 we did for rating the districts. This is just a flow  
6 chart. I don't want to spend a whole lot of time with  
7 this.

8 But on the right here, you see three different  
9 diagrams, and this is just a visual way for me to explain  
10 to you that we developed thresholds to which we applied --  
11 let me step back.

12 Our inspectors, as they document deficiencies,  
13 they note the location and length of each deficiency and  
14 the rating of that deficiency. So we add up all those  
15 deficiencies, the lengths of all those deficiencies, and  
16 we calculate a percentage of the total levee miles for  
17 that maintaining agency.

18 From there, we apply the thresholds that we  
19 establish here. And in this case, if you have a district  
20 that has deficiencies documented, that all the  
21 deficiencies documented have minimally acceptable ratings,  
22 then you would go to this chart. And let's assume they  
23 have 15 percent of their levee miles rated as M, or  
24 minimally acceptable. Well, that falls within the blue  
25 area here, 15 percent. Their total overall rating would

1 be minimally acceptable. So the threshold for an  
2 unacceptable rating is 20 percent of their levee miles,  
3 rated as M.

4 So if you have a 10-mile levee or you have two or  
5 more miles of that rated as M in any category, the total  
6 mileage, if it totals 2 miles out of 10, then we think  
7 that is unacceptable, and that's how we rated the  
8 districts.

9 The next possibility is if they only have  
10 unacceptable ratings. The threshold is a lot lower,  
11 because unacceptable deficiencies are more severe. So the  
12 threshold is 5 percent for unacceptable ratings.

13 If they have one unacceptable rating on one item  
14 on the levee, even if they are a 20-mile long levee, their  
15 overall rating can't be any better than a minimally  
16 acceptable rating. If they are over 5 percent, then they  
17 fall under the unacceptable category.

18 And then you have the mix of what if I have some M  
19 ratings and some U ratings, some minimally acceptable,  
20 some unacceptable. So we came up with a formula which  
21 basically, it takes the minimally acceptable and adds to  
22 it four times the unacceptable. And the reason we did  
23 that is, if you think back to the last chart, the  
24 unacceptable threshold was 5 percent. To equate 5 percent  
25 to 20 percent, you have to multiple it by four. It's just

1 a mathematical calculation to come up with a way to making  
2 the two variables consistent between minimally acceptable  
3 and unacceptable ratings.

4 I'm not going to step through these examples. I  
5 had them here in case you had any questions. I guess I  
6 will step back.

7 Does anybody have any questions at this point on  
8 our rating methodology, before I continue?

9 VICE PRESIDENT HODGKINS: Not on the methodology  
10 at this point, but you know, the Corps really has put a  
11 new emphasis on making sure that maintenance is upgraded  
12 on the levees, and it sounds like DWR has done the same  
13 thing.

14 Now, we had a report from the Corps, I guess about  
15 a year ago, that rated maybe 30 LMAs.

16 MR. ARRICH: 28, yeah.

17 VICE PRESIDENT HODGKINS: How many?

18 MR. ARRICH: I believe it was 28 known project  
19 levees.

20 VICE PRESIDENT HODGKINS: Are those 28 part of the  
21 unacceptable rated by DWR? Do you know?

22 MR. ARRICH: Some are. And I know of one in  
23 particular, at least part of -- one of the districts. We  
24 rated it as acceptable. However, the issue with that  
25 agency is that they still have issues with their

1 encroachments. And the way we rated the encroachments as  
2 partially obstructing or completely obstructing, we didn't  
3 count those in our rating. So just because we rated it as  
4 acceptable does not mean that the Corps will deem them  
5 acceptable as a result of the list of 28. So it's a  
6 little tricky. But some are, and some aren't.

7 VICE PRESIDENT HODGKINS: Okay. Is there  
8 improvement, I guess is what I would be looking for.

9 MR. ARRICH: Definitely. That's one thing I  
10 wanted to point out is, the increase in unacceptable  
11 ratings is attributable to the way we're applying the  
12 criteria, the level of detail that we're going through to  
13 document and rate the deficiencies, and the thresholds  
14 that -- our high expectations of improved maintenance.

15 But maintenance in general has improved over the  
16 last -- more so over the last, you know, six to nine  
17 months than even two years ago.

18 We applied -- when the Corps came out with their  
19 initial list of 28, and we started implementing the new  
20 criteria, that's when we started seeing a lot of  
21 improvements in maintenance. So we are seeing trees being  
22 trimmed up and thinned out, and a lot of agencies are  
23 being proactive.

24 So the levees are no less safe than they were  
25 before. We're just trying to get them to meet our

1 standards for visibility and access because we think  
2 that's very important.

3 VICE PRESIDENT HODGKINS: Thank you. Very good.

4 MEMBER BROWN: Mr. Chairman?

5 Maybe you could help explain what seemingly is a  
6 conflict with the Division of Dam Safety, Department of  
7 Water Resources, in that on earth-filled dams, regardless  
8 of their size, they don't allow any woody plants  
9 whatsoever, for obvious reasons. When the trees die out,  
10 then the roots shrink up and you have potential piping  
11 that can occur along the path of the root structure. Why  
12 is it that we allow woody plants on levees themselves? It  
13 seems like there's a conflict here.

14 And the Corps of Engineers too, I think they have  
15 criteria. In your report here, it says something about  
16 the wholesale removal. I think the Corps has the  
17 wholesale removal of woody vegetation, as mandated in one  
18 of the white papers.

19 But what's the conflict here, if there is one,  
20 with the Department?

21 MR. ARRICH: I would say the primary conflict is  
22 the environmental conflict. And the levees in California  
23 are very close into the river, and some of the only  
24 remaining riparian habitat exists along the water's edge,  
25 and the water's edge is pretty much the levee slope in

1 most cases.

2 It is an issue we're working on with the Corps,  
3 currently -- the vegetation criteria and how the criteria  
4 will be used or implemented in the future.

5 MEMBER BROWN: Now, there could be a serious cost  
6 if piping does occur and failure due to some of those  
7 woody plants dying out. I think that really needs to have  
8 a hard look.

9 MR. ARRICH: Yeah. And we are looking at it very  
10 hard right now. When plants do die off, what's the proper  
11 method of removing the root systems and recompacting the  
12 material? So we definitely are not encouraging  
13 maintainers to go and start chopping down trees and  
14 leaving the roots.

15 If they are going to remove any vegetation, they  
16 need to work through their environmental regulations that  
17 exist, both state and federal.

18 MEMBER BROWN: You might grandfather in what's  
19 existing. But I'd sure look at it pretty hard, anything  
20 new being planted or allowed to grow.

21 MR. ARRICH: Definitely. I agree with that.

22 And I think on new levee projects and setback  
23 levees, these issues are being looked at closer now.

24 VICE PRESIDENT HODGKINS: But I think -- and  
25 that's where Ben is this morning, is a meeting that is

1 focused on trying to get some closure between the Corps'  
2 standard of nothing larger than two inches, which means  
3 cut all those trees that were shown in his picture, and  
4 practice in California, observation in California that  
5 about whether or not levee failures have actually been  
6 caused by trees; and some sort of agreement with the  
7 resource agencies who are very focused on the fact that  
8 95 percent of the riparian vegetation in the state has  
9 been lost, and the 5 percent that's left, much of it is on  
10 the portions of levees where under the Corps standard, it  
11 would have to be removed. And it's an issue under the  
12 Endangered Species Act, because it's considered to be  
13 important habitat for the fish.

14           So it's not an easy problem for us to solve, and  
15 it is one that is trying to do work through -- to find  
16 some sort of approach that doesn't immediately put us  
17 further in the hole under the Endangered Species Act. I  
18 mean, that's a short version of it.

19           MR. ARRICH: So to wrap up what's next, we have  
20 completed packaging up all the mailers to send the results  
21 out to the local maintaining agencies, and they are in the  
22 mail today. We dropped them off at the Department's mail  
23 room this morning, so they should be receiving those by  
24 early next week.

25           The 2007 Annual Inspection Report is being

1 developed, and we hope to kick that out in the next few  
2 weeks, hopefully. And that will be presented to the Board  
3 once it's available at whatever following board meeting  
4 comes.

5 The spring 2008 inspections are underway already.  
6 And we're using our new database, as I mentioned, and  
7 we're using the same criteria that I went over at the  
8 beginning, that we used in the fall. So we're using the  
9 same criteria there.

10 And we're going to be working with the Corps, the  
11 Board, local maintaining agencies on levee issues.  
12 There's definitely time for the districts to make  
13 improvements before we do the ratings next fall. A lot of  
14 them are already out there working diligently to clear the  
15 slopes a little bit more and get some more visibility and  
16 access.

17 So more to come, for sure.

18 VICE PRESIDENT HODGKINS: From my point, Jeremy, I  
19 really appreciate the report and would encourage you, and  
20 maybe the Department, to perhaps share it with the  
21 Legislature so that they understand that everybody is  
22 taking seriously the whole issue of trying to improve our  
23 focus on all aspects of risk management with respect to  
24 flooding.

25 Great job in my opinion.



1 MR. ARRICH: Thanks.

2 VICE PRESIDENT HODGKINS: Thank you.

3 MR. QUALLEY: So I will make a couple of follow-up  
4 comments. As Butch alluded, his meeting going on over at  
5 the Corps, and Ben is there, and Dave Gutierrez and Rod  
6 Mayer, the San Francisco division is there and one of the  
7 generals, General Riley from Washington is there, on the  
8 phone as well.

9 So the Corps seems to be taking seriously the  
10 concerns that are brought up, and we're hopeful that, you  
11 know, a meeting such as this will take us in a better  
12 direction. Of course last -- there have been a series of  
13 meetings of the levee roundtable that started, of course,  
14 with the initiation of the first one after the vegetation  
15 conference last summer.

16 And I'm sure Jay is probably going to make a  
17 report on that, so I won't steal his thunder on that. But  
18 just, in short, the Department had put together a Draft  
19 Levee Vegetation Management Plan, and there was -- and  
20 that was, you know, provided at the roundtable meeting  
21 last Friday, and there was a lengthy discussion on some  
22 tenants that the Corps of Engineers had introduced at the  
23 meeting, and we will follow up. We will be incorporating  
24 comments that we receive from all the participants at the  
25 levee roundtable, and I think the next meeting is

1 scheduled for May 9th.

2           So in between now and May 9th, and as we make  
3 changes to that initial draft to incorporate both comments  
4 that were made and the results of, you know, continuing  
5 dialogue with the Corps on this. So we're hopeful to wind  
6 up with a place -- to where we have a plan over time to  
7 meet the Corps' criteria. Because certainly, you know,  
8 they say public safety is number 1; we say public safety  
9 is number 1. We can't do it overnight. These things have  
10 been that way for a long time.

11           So we have to have a structured plan to get there  
12 in a way that's, for one thing, affordable for the various  
13 participants. And takes into account the whole -- you  
14 know, the whole range of values, and the fact that, you  
15 know, vegetation on levees is certainly a risk factor in  
16 the grand scheme of things. But there are -- it's one of  
17 a number of risk factors.

18           So we have to be judicious with the use of our  
19 funding to take a priority look. For example, with the  
20 bond funds we have available to us now, what's the best  
21 and highest use of that funding to make improvements in  
22 the system? We can't afford to just look at one risk  
23 factor; we have to look at all of them and make a judgment  
24 as to what's the best use of our efforts.

25           VICE PRESIDENT HODGKINS: Thank you, George.

1 Other questions? Okay.

2 We're going to take a break. We will resume at  
3 10:15 promptly and move ahead with the Three Rivers Levee  
4 Improvement Report, and then dealing with the consent  
5 calendar.

6 (Thereupon a break was taken in  
7 proceedings.)

8 VICE PRESIDENT HODGKINS: I would like to call the  
9 meeting back to order, if I could, even though we're short  
10 a couple of board members. By the time we get to a voting  
11 item, they will be here. So could we come back to order,  
12 please.

13 All right. I believe we are on Item 6, Three  
14 Rivers Levee Improvement Authority Monthly Report.

15 Mr. Brunner?

16 MR. BRUNNER: Good morning, Vice President  
17 Hodgkins and members of the Board.

18 I'm Paul Brunner, the executive director of Three  
19 Rivers. And I'm going to direct you to the monthly report  
20 that's in your package and go through and just really,  
21 particular for the sake of time, just highlight some of  
22 the issues and what are some of the important,  
23 significant, items in the report. And then highlight, as  
24 I do that, the significant changes that have occurred in  
25 the last few weeks since we have turned in the report.

1           In this report, I'm going to direct you first to  
2   page 4 in our report and piggyback onto what George  
3   Qualley was talking about earlier on funding. This is  
4   Item No. 3, funding update.

5           George made a very significant comment for us in  
6   his report about the early implementation projects and  
7   schedules. The decision document for that program for us  
8   was signed. That's a -- really, in Yuba County, you've  
9   probably heard hallelujahs coming on that. But we did get  
10   that signed.

11           That really then tees up the finalization of all  
12   our other documentation that we have. The documentation  
13   resolutions are all in place. Next week, we do  
14   anticipate, expect, that the final documentation will get  
15   signed. That's for our local share funding.

16           We're in the final throes of working with the  
17   development community to do that, get everything signed  
18   off. And once that is done, we will then be able to enter  
19   into the funding agreement that George was talking about.  
20   We've been working hand-in-glove with them with all the  
21   various details. They will direct fund, such as land  
22   payment for purchase of land, and help out with our  
23   construction, up front, for money flow. So we're in sync  
24   on the agreement as to sign it.

25           I have been delegated the authority to sign, once

1 the final documentation is in place. And then we'll be  
2 able to move forward.

3 We're currently in the process of building the  
4 various work plan, the quarterly work plan, which is the  
5 submission that is part of the process the state's laid  
6 out, where we will submit to them on a quarterly basis  
7 what our funding needs are so they can direct pay to us,  
8 their portion of what their agreement says to do.

9 And then there's a quarterly process where we  
10 reconcile that throughout the process on the project. So  
11 things are moving forward. We anticipate -- I'm still  
12 pushing to try to be in the field, or at least money  
13 flowing, in the April/May time period. Potentially might  
14 go to May as things work on this project. But our goal is  
15 to still to try our best, to still accomplish this project  
16 in the 2008 time period. That's our commitment to you all  
17 and also to the community. So we have been pushing and  
18 trying to find all types of innovative ways to continue to  
19 move forward. I think legitimate ways.

20 You are going to hear about one this afternoon, at  
21 1:00 o'clock. So we'll come back. And in my report, I'm  
22 going to go through all those details about the setback  
23 and the encroachment permit for it. But we do have an  
24 approach that we think is very viable, that we work with  
25 the state staff and also with the Corps on. And you will

1 hear the discussion this afternoon on that.

2 From the funding, the funding actually tees up the  
3 construction activities that we have planned. And I'm  
4 going to direct you now to page 2 on our report. And Page  
5 2, we start to list under Item C there, Phase 4, the  
6 construction activities that we have. And Segments 1 and  
7 3, and this is on the Feather River Project, with the --  
8 as the agreements are being finalized and money starts to  
9 flow and hopefully in the April time frame like I just  
10 shared, I anticipate we will be awarding or giving notice  
11 to proceed for Segment 3, because it's already under  
12 contract to start the rest of that work and then do the  
13 award for Segment 1 to start that work for the summer in  
14 the April/May time period on it.

15 On Segment 3 on the trench collapse, we've been  
16 working on -- this is where last year we worked on the  
17 trench and there was a collapse, and then we built back up  
18 the berm for support on the levee. We need to come back  
19 working with the Board staff and yourselves to make a  
20 modification of that permit. We have some solutions that  
21 we're going to be working. We're internally discussing  
22 that we have to come back. I foresee that coming back  
23 before the Board probably, if we can get on the agenda in  
24 the May time period, in that time, Jay, where we come with  
25 our solution. And there may be a cutoff wall. We're

1 actually kind of looking at maybe we should do a seepage  
2 berm, something like what we did on the Yuba Project, a  
3 larger one, the difficulty that we have there.

4 But that will come down in the future. So we're  
5 addressing that issue. That needs to be agendized and  
6 then get it on the permit so that the contractors can  
7 build it this summer, whatever the final solution is.

8 And if we come early enough, we'll be able to get  
9 it done this summer under contract.

10 And then on the next page, on page 3, on Segment  
11 2, this is the one that you are going to hear a lot of  
12 discussion about this afternoon, hopefully at 1 o'clock on  
13 your agenda.

14 The -- we do -- a couple of things that I will  
15 mention here of highlight. The Corps did decide that we  
16 will need to do an Environmental Impact Statement. I  
17 think Scott, who spoke last year in my place, in last  
18 month -- I could not make that meeting -- but mentioned  
19 about the idea about the Environmental Impact Statement  
20 and some of the consequences with it.

21 The decision was made. We're busily working on  
22 that document with the Corps. A draft administrative  
23 document was submitted to the Corps, I think, earlier this  
24 week. We have a schedule; very aggressive schedule going  
25 forward on that.

1           There was a scoping meeting on May 10th that was  
2   held on that project with the Corps. We hope that process  
3   concludes this fall, which will allow us to marry into  
4   some construction activities that deal with this phased  
5   construction approach that you are going to hear about  
6   later on this afternoon and how we plan to build the  
7   levee. So there is some matching that's going on in here.

8           In preparation for our project, the -- now that  
9   we're about ready to launch into full-scale excavating  
10  soil and building levees, which is going to be pretty  
11  exciting, the -- we're now having discussions with the  
12  landowners in earnest, and over the last two TRLIA Board  
13  meetings, we did take to the TRLIA Board 15 different  
14  residents, parcels in the eminent domain actions. They  
15  were not over contesting the project at all; they were  
16  over dollar and price.

17          The thing with eminent domain actions, you still  
18  continue to have discussions with people about resolving  
19  the things, if possible, during that time. And so we've  
20  done our best effort to do that. And we continue to do.  
21  Just last night, I was working with one of the families  
22  and trying to figure out how do we resolve the case and  
23  meet their needs as we go through eminent domain.

24          I'm going to -- my last item I wanted to  
25  highlight, which is on page 4, and this is on the



1 missing -- all of those under buried utilities that go  
2 through our levees that we have. And there were several  
3 action items that came through.

4           And I understand at the last meeting, President  
5 Carter had asked that we do a special report that we  
6 submit to you. And we did turn this in to you all, to  
7 Jay, to distribute to the board members. So I'm going to  
8 presume that it was distributed. If not, I have extra  
9 copies here that could be distributed.

10           The highlights of the special report that we had  
11 talked about on the Yuba Levee, there was two utilities  
12 that didn't have markers that flagged the locations. They  
13 were AT&T and Sprint. We have communicated with them  
14 again by letter. My staff is contacting them verbally  
15 again to put the markers in. I don't have back from them  
16 that they're going to put the markers in. If they don't  
17 come back with a positive response, we'll just go ahead  
18 and put the markers and flag it. And I will give you an  
19 update of that at the next meeting as to where we are. It  
20 seems like a simple enough thing to do, to flag and move  
21 forward.

22           I would appreciate it if the Rec Board staff could  
23 support those efforts, say something to Sprint, and to, in  
24 this case, AT&T about, you should be doing some of these  
25 things yourself, and be aggressive in that manner to

1 support us.

2           There was an item here too with Qwest. The Qwest  
3 has -- which is a communications company. Has a utility  
4 that goes through, again, the Yuba levee by a railroad  
5 track. It is embedded in the railroad track embankment,  
6 but it's below the '57 profile.

7           In communication with the Corps on this issue,  
8 they really believe that it should be raised on it. So we  
9 got that communication back by special notice here or a  
10 report talks about us doing that. Since that time, we've  
11 gone and talked to the Corps. We've got back  
12 correspondence and e-mail from them saying, we should  
13 really raise it.

14           What that will cause us to do now is to go back in  
15 and approach, again, Jay, your office and to have them  
16 really put the pressure on them to raise that above the  
17 '57 profile.

18           With that, I'm going to close and ask if there's  
19 questions.

20           SECRETARY DOHERTY: Yes. I have a question for  
21 you. I don't know whether it's in your report. I read it  
22 somewhere, that the people that you are acquiring the land  
23 from were -- felt that they were in kind of no man's land  
24 and that would they be able to retape their parcels until  
25 harvest, or were they going to -- I think they just felt

1 they didn't know. Was that in your newspapers, or was  
2 that in your report?

3 MR. BRUNNER: It's most likely as a result of the  
4 newspaper article in the Appeal Democrat.

5 There was a -- one of the family's business  
6 operations did talk about harvesting and the impact of our  
7 levee work because the harvest season would extend through  
8 September on it.

9 And the portions of this one company's property is  
10 in location of a borrow site that we need for filling the  
11 embankment. It is also a key segment of a levee in the  
12 middle that we need to go through. And so there was some  
13 room during the course of the meeting, as we continued to  
14 talk with this company, to work out details of gaining at  
15 least access to the levee corridor and minimizing it as  
16 much as possible on the crop. To build the levee, we  
17 would have to impact that season somewhat. But we'll try  
18 very hard to minimize it. And that's our intention with  
19 the other residents.

20 The one that I met with last night, I had a  
21 discussion about a similar situation. I think they were  
22 also quoted in the same article about some impacts on  
23 their property and how we can mitigate that. And so I  
24 think we're working through solutions with this other  
25 resident to try to minimize it.

1           When you are building a levee through an orchard,  
2   and you have a time schedule, you are going to have  
3   impacts on it.

4           SECRETARY DOHERTY: Right. I just wanted to know  
5   if you are working with them as best you can.

6           MR. BRUNNER: We are.

7           SECRETARY DOHERTY: Because it's difficult to be  
8   displaced --

9           MR. BRUNNER: Oh, absolutely.

10          SECRETARY DOHERTY: -- no matter what reason for.

11          MR. BRUNNER: Yeah. Eminent domain is really gut  
12   wrenching at times for the families and also for those who  
13   make the decisions. If we could avoid it, we would.

14          SECRETARY DOHERTY: Okay. Thank you.

15          VICE PRESIDENT HODGKINS: Paul, I would like to  
16   ask you, in submitting this report next month, there are  
17   several items in here where in effect the report says  
18   there's no change since the last month. And I understand,  
19   or at least it's my opinion, in most cases that those are  
20   not critical items.

21          But so that this report doesn't look like to some  
22   other people who are not taking care of these, when you  
23   are making that statement, could you add to it your best  
24   estimate of when it is you think you will with be able to  
25   address that. I know your priorities are focused on the

1 big issues here. I don't disagree with that at all. But  
2 I just hate to produce a report that says "no change."

3 And I would ask staff also to think about whether  
4 any of these items where they are not resolved, where you  
5 feel strongly that it should be a higher priority, to put  
6 on it and work with Paul before the next meeting. Okay?

7 MR. BRUNNER: Okay. That's acceptable. I note on  
8 the -- they are really -- those are on page 1. So they  
9 are the first things you read.

10 But the -- Jay will need help on that very first  
11 one on page 1 that deals with the detention basin and the  
12 permitting that your office has.

13 The other two, we can come back with completion  
14 updates.

15 VICE PRESIDENT HODGKINS: Thank you.

16 MR. BRUNNER: Thank you.

17 VICE PRESIDENT HODGKINS: Other questions?

18 Other comments from the audience?

19 I have no cards.

20 Okay. We're going to move now to Item 7, which is  
21 the consent calendar.

22 Just by way of introduction here, when we became  
23 the Central Valley Flood Protection Board, among other  
24 things, the legislation has created for us that all permit  
25 actions have to be done in the forum of an evidentiary

1 hearing.

2 And we were trying to take care of some of the  
3 less significant permits from the standpoint of changes to  
4 the flood control system using the consent calendar,  
5 complying with the legislation, and items that have been  
6 calendared where it was hoped that we would get all of the  
7 information we needed for the item to be actionable on the  
8 consent calendar by the time of the Board meeting.

9 What we're going to do now is deal with the fact  
10 that we have in the consent calendar several items that we  
11 don't have all the information that we need, and so those  
12 items are not going to be considered, perhaps, as part of  
13 the consent calendar today.

14 And I'm going to ask Jay to help us work through  
15 this, and Ginny, to help us work through this from the  
16 standpoint that if we move an item from the consent  
17 calendar, it then becomes a hearing item, and we need to  
18 be careful in how we proceed with that item.

19 And I am not used to doing that. So I will need  
20 help.

21 Thank you.

22 SECRETARY DOHERTY: Mr. Chairman, I have a  
23 question for you. We approved the agenda with the  
24 exception of Item 7. So now we have to go back and do we  
25 approve or --

1 EXECUTIVE OFFICER PUNIA: I think that's my  
2 understanding. I will make some -- recommend some changes  
3 to Item 7, and I will seek Board's approval.

4 I think I have a slightly different recommendation  
5 to the Board from when we discussed earlier agenda items.  
6 I was hoping that we would get information from the U.S.  
7 Army Corps of Engineers on 7E and F. But Megan Nagey from  
8 the U.S. Army Corps of Engineers informed me that we are  
9 not able to get the Corps letter on E and F.

10 So my recommendation to the Board is that Item 7A,  
11 7B, 7D, 7E, 7F be pulled from the agenda, and we will  
12 bring these items back to the Board for its consideration  
13 when we have the information from the U.S. Army Corps of  
14 Engineers.

15 Item C, Item 7G, Item 7H should stay on the  
16 consent. And we have provided you the information on  
17 these items.

18 I propose that the Board should consider and  
19 modify Item 7 as proposed.

20 Thank you.

21 VICE PRESIDENT HODGKINS: Okay. I think at this  
22 point we would look for a motion. But before we do that,  
23 I would like to know, is there anybody in the audience who  
24 just -- I have no cards for any of these items. But if  
25 you are interested in commenting on one of the items,

1 could you raise your hand?

2 Okay. So we have no one here for comment on these  
3 items.

4 And what's the pleasure of the Board here?

5 SECRETARY DOHERTY: Then I would make a motion  
6 that we take Agenda 7 with the recommendations of  
7 Mr. Punia. That means that Item C, 7C, stays, and that's  
8 it.

9 EXECUTIVE OFFICER PUNIA: 7G and H --

10 SECRETARY DOHERTY: Oh. G and H.

11 EXECUTIVE OFFICER PUNIA: -- stays on consent.

12 SECRETARY DOHERTY: All right.

13 That we accept Agenda 7C, G, and H stay on the  
14 consent calendar.

15 VICE PRESIDENT HODGKINS: Okay. Is there a  
16 second?

17 MEMBER BROWN: I will second.

18 VICE PRESIDENT HODGKINS: Can you call the roll,  
19 Jay?

20 MEMBER SUAREZ: I'm sorry. Could I have a moment  
21 of discussion --

22 VICE PRESIDENT HODGKINS: Sure.

23 MEMBER SUAREZ: -- before we proceed?

24 I understand there's nobody in the audience again  
25 that has any -- could somebody again read the items that



1 we're pulling off, specifically in terms of the applicants  
2 that are being affected to make sure that the audience  
3 understand that these are items that we're going to be  
4 considering here today?

5 VICE PRESIDENT HODGKINS: Yeah. I'm willing to do  
6 that. Okay.

7 So clarifying the motion, the items that would be  
8 dropped from the consent calendar today are 7A, Permit  
9 No. 18213, City of Lathrop; 7B, Permit No. 18286, Brian  
10 Richards, Ord Bend; Permit No. 18321, Department of Water  
11 Resources, Steve Dawson, that's 7D; 7E, Permit No. 18303,  
12 Noboru Nakayama in Clarksburg; and 7F, Permit No. 18329,  
13 Ernest Burroughs, Clarksburg.

14 So those are the items that are being dropped from  
15 the consent with the motion. There's a motion to drop  
16 those items from the consent calendar.

17 MEMBER SUAREZ: Thank you. And then I have a  
18 question for staff.

19 I would like to know whether these applicants were  
20 notified that there was a possibility that these items  
21 were going to be dropped, and/or do we know whether, from  
22 your conversation with the applicant, there's an issue of  
23 timeliness in terms of their expectation of getting these  
24 permits.

25 EXECUTIVE OFFICER PUNIA: I think 7E, 7F, and 7D,

1 these are being proposed by Department of Water Resources  
2 and we are closely coordinating with the Department of  
3 Water Resources.

4 And 7A is the City of Lathrop. Steve Dawson, our  
5 staff person, is in touch with the city folks, but I think  
6 I need Steve's help to verify whether he contacted the  
7 City this morning or not.

8 And 7B, I think that's also -- I need Steve to  
9 elaborate whether he contacted the applicant or not.

10 PRESIDENT CARTER: Mr. Chair, if I could just, for  
11 the record, let the record reflect that Ben Carter has  
12 returned from his meeting and has rejoined the meeting.

13 SECRETARY DOHERTY: And Ms. Burroughs.

14 PRESIDENT CARTER: And Ms. Burroughs as well.

15 MEMBER BURROUGHS: Thank you.

16 EXECUTIVE OFFICER PUNIA: Steve, could you  
17 elaborate whether we contacted the applicant this morning  
18 or not.

19 MR. DAWSON: I did not contact them this morning.

20 I had discussions with staff several days ago,  
21 explaining that I was waiting for Corps comments and that  
22 I would be able -- would not be able to present it if I  
23 did not receive it. But I did not notify them today.

24 EXECUTIVE OFFICER PUNIA: I want to make another  
25 comment. I think -- I apologize, providing late

1 information to the Board members and then pulling the  
2 items.

3 But the intent was that these -- we wanted to keep  
4 these projects and applications moving and we were hoping  
5 that we will have all the pieces and be -- we'll be able  
6 to provide the information to the Board. But we were not  
7 successful in gathering all the information needed to make  
8 a solid recommendation to the Board.

9 VICE PRESIDENT HODGKINS: From my perspective at  
10 least, given the situation we're in, when these items have  
11 to come in front of the Board now, I think that's the  
12 right approach. As long as we're letting the applicants  
13 know that we're not going to know right up until the time  
14 the item is on the agenda whether we have all the  
15 information to leave it as a consent item.

16 So I think we're doing the right thing.

17 PRESIDENT CARTER: Mr. Chair, if I could make a  
18 comment.

19 I think -- and I don't know if this has already  
20 been made, but this is indicative of some of the  
21 challenges that the Board faces under these new  
22 regulations where all of these permits need to come before  
23 the Board for approval, and we are adjusting our processes  
24 to accommodate the -- both the law as well as the  
25 applicants.

1           It's unfortunate that our legislative members are  
2   not here to really experience these trials and  
3   tribulations. So -- but hopefully we can work with the  
4   Legislature to try and resolve some of these problems so  
5   that perhaps some of these routine applications don't have  
6   to come before the Board and can be approved by the Board  
7   staff.

8           Thank you.

9           VICE PRESIDENT HODGKINS: Okay. So to summarize  
10   again, the motion is to drop from the consent calendar 7A,  
11   7B, 7D, 7E, and 7F.

12          And that was moved and seconded.

13          Can we do a roll call?

14          MEMBER BROWN: Question. You're not approving the  
15   consent calendar at this time?

16          VICE PRESIDENT HODGKINS: No. We're simply  
17   modifying it to remove those items from it.

18          Call the roll, please.

19          EXECUTIVE OFFICER PUNIA: Board Member Emma  
20   Suarez?

21          MEMBER SUAREZ: Yes.

22          EXECUTIVE OFFICER PUNIA: Vice President Butch  
23   Hodgkins?

24          VICE PRESIDENT HODGKINS: Yes.

25          EXECUTIVE OFFICER PUNIA: President Ben Carter?

1 PRESIDENT CARTER: Yes.

2 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

3 SECRETARY DOHERTY: Yes.

4 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie  
5 Burroughs?

6 MEMBER BURROUGHS: Yes.

7 EXECUTIVE OFFICER PUNIA: Board Member John Brown?

8 MEMBER BROWN: Aye.

9 EXECUTIVE OFFICER PUNIA: Thank you.

10 VICE PRESIDENT HODGKINS: Okay. Very good.

11 So now we have a modified consent calendar.

12 Do I have a motion to approve?

13 MEMBER BROWN: I have a question, Mr. Chairman.

14 On the Madera Grand Jury report, it appears that  
15 this issue is the responsibility of the County of Madera  
16 and not the State Water Board. But they are asking for  
17 our input in and, I guess, participation in this. So it  
18 begs the question, if it's not our responsibility, and we  
19 have input on this project, if something goes south on it,  
20 then do we become responsible since we've had input on it?

21 I've seen that happen before, where you become a  
22 party even though the work and effort you participated in  
23 is very small.

24 And if something does go wrong -- damage,  
25 flooding, suits -- then are we putting the state in

1 jeopardy on something that we need not to do.

2 VICE PRESIDENT HODGKINS: I think before we answer  
3 the question, I'm going to ask Ginny. It's a consent  
4 calendar. Are we allowed or is it appropriate,  
5 permissible, to ask this kind of a question and leave it  
6 on the consent calendar? Or does it have to be taken off  
7 so it can be discussed in detail?

8 LEGAL COUNSEL CAHILL: I think if we're going to  
9 discuss it, we need to pull it from consent.

10 VICE PRESIDENT HODGKINS: Okay. So to pursue the  
11 discussion in answering your question, John, we have to  
12 remove it from the consent calendar.

13 Would you like to make that motion?

14 MEMBER BROWN: I will so move, Mr. Chairman.

15 VICE PRESIDENT HODGKINS: Is there a second?

16 MEMBER BURROUGHS: Second.

17 VICE PRESIDENT HODGKINS: Moved and seconded.

18 Call the roll.

19 EXECUTIVE OFFICER PUNIA: Board Member Emma  
20 Suarez?

21 MEMBER SUAREZ: Yes.

22 EXECUTIVE OFFICER PUNIA: Vice President Butch  
23 Hodgkins?

24 VICE PRESIDENT HODGKINS: Yes.

25 EXECUTIVE OFFICER PUNIA: President Ben Carter?

1 PRESIDENT CARTER: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

3 SECRETARY DOHERTY: Aye.

4 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie  
5 Burroughs?

6 MEMBER BURROUGHS: Aye.

7 EXECUTIVE OFFICER PUNIA: Board Member John Brown?

8 MEMBER BROWN: Aye.

9 VICE PRESIDENT HODGKINS: Okay.

10 Now I would like to seek a motion to approve the  
11 consent calendar, which now consists of Item 7C and 7H.

12 PRESIDENT CARTER: So moved.

13 MEMBER BROWN: Second.

14 VICE PRESIDENT HODGKINS: Moved and seconded.

15 Call the roll, please.

16 EXECUTIVE OFFICER PUNIA: Board Member John Brown?

17 MEMBER BROWN: Aye.

18 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie  
19 Burroughs?

20 MEMBER BURROUGHS: Aye.

21 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

22 SECRETARY DOHERTY: Aye.

23 EXECUTIVE OFFICER PUNIA: President Ben Carter?

24 PRESIDENT CARTER: Aye.

25 EXECUTIVE OFFICER PUNIA: Vice President Butch

1     Hodgkins?

2             VICE PRESIDENT HODGKINS:   Aye.

3             EXECUTIVE OFFICER PUNIA:   Board Member Emma  
4     Suarez?

5             MEMBER SUAREZ:   Yes.

6             VICE PRESIDENT HODGKINS:   Okay.

7             Now I'm going to turn the gavel back over, if I  
8     may, to the real chair, who understands how to conduct  
9     this in an efficient and effective way.

10            So let me do that.

11            PRESIDENT CARTER:   Thanks for getting us out of  
12     that mess, Butch.   I came in, in the middle of this.   I  
13     assume that we are considering Item 7 at this point.   We  
14     have pulled Item 7G from the consent calendar, so that  
15     would move to a requested action.

16            I assume we could go ahead and consider that item  
17     right now; is that correct?

18            LEGAL COUNSEL CAHILL:   Correct.

19            PRESIDENT CARTER:   So if perhaps Ms. Cahill or Mr.  
20     Fua could brief the Board on the situation here, Madera  
21     Grand Jury Final Report, Maintenance of the Flood Control  
22     Waterways, as Agreed to in 1997 [sic], Madera County .

23            Would one of you like to --

24            MEMBER BROWN:   Mr. Chair.

25            PRESIDENT CARTER:   Yes, sir.



1           MEMBER BROWN: Before we get counsel's review on  
2 this, the statement I am observing here is in reference to  
3 your letter, March 21, 2008, to Madera County Grand Jury,  
4 in a statement saying, "The State of California, including  
5 the Central Valley Flood Protection Board, is not subject  
6 to the reviewing authority of the Madera County Grand  
7 Jury."

8           That being the case, it begs the question, then,  
9 do we wish to get involved and become a party in this for  
10 whatever reason? And maybe we do; maybe we don't.

11           SECRETARY DOHERTY: Mr. Chairman?

12           PRESIDENT CARTER: Yes, ma'am.

13           SECRETARY DOHERTY: And Mr. Brown, I think we have  
14 a consent calendar. Don't we have to vote on Item C now  
15 and approve the consent calendar as presented, what's  
16 left, before we go on to discussion of Madera?

17           VICE PRESIDENT HODGKINS: That's what we just did.

18           SECRETARY DOHERTY: Oh.

19           PRESIDENT CARTER: Did we not?

20           SECRETARY DOHERTY: Yes. I even made a paragraph  
21 of it. Okay. I got it.

22           PRESIDENT CARTER: I'm glad you're keeping track  
23 of these things.

24           SECRETARY DOHERTY: Okay. So we are not on the  
25 consent calendar anymore. We are under requested items

1 where we are considering Item 7G, which has been pulled  
2 from the consent calendar, to requested actions.

3 And Mr. Brown has raised the question as to  
4 jurisdiction of the grand jury and so forth.

5 So I will hold it up for discussion. Does staff  
6 have any comments on this? Any recommendations? Does the  
7 Board -- Mr. Brown, do you want to --

8 MEMBER BROWN: Yes. On the Good Samaritan Act,  
9 the State of California did enact legislation a couple,  
10 three or four years ago, maybe longer than that, that  
11 protects the State on these issues.

12 If the State comes in as a good samaritan and is  
13 not primarily responsible but helps to improve the  
14 project, then there is legislation protecting the State  
15 against the recourse.

16 But the Feds have not done that, as of yet, that I  
17 know. So you could, if something goes south, you could be  
18 called in federal court. But I think there is protection  
19 in state court. But still, the federal court might be a  
20 concern. So that's the question. I'm not saying we  
21 should or shouldn't. But I just want to know the answer.

22 PRESIDENT CARTER: Okay. Does staff want to  
23 address that, please?

24 LEGAL COUNSEL CAHILL: Yeah, I can talk about  
25 this.

1           This came in from the Madera County Grand Jury.  
2   And they were primarily investigating the Madera County  
3   Flood Control and Water Conservation Agency.

4           And however, they sent a letter to the Board as  
5   one of the agencies that they were going to require  
6   responses from. And they cite the Penal Code that says  
7   when you get a request for a response, you have to -- the  
8   governing board has to respond.

9           I did a bit of research and determined that we  
10   probably were not subject to their reviewing authority and  
11   consequently, we're probably not legally required to  
12   respond. But I wasn't a hundred percent positive of this.  
13   And it seemed more cooperative to -- since what they were  
14   putting forth was factual and their recommendation was  
15   that this other agency live up to its agreement with the  
16   Board, that we didn't disagree with that recommendation,  
17   that we would just go ahead and respond.

18           We have time, if the Board wants me to do more  
19   exhaustive research on whether we have to respond at all,  
20   we would still have time to do this at your next meeting.

21           I think what we have agreed, I think if you went  
22   through the responses in here, we aren't taking on  
23   liability. We are -- basically their findings, their  
24   factual findings, staff went through those, confirmed that  
25   those factual findings were correct.

1           Their first recommendation is that their agency be  
2   directed to review existing agreements and take immediate  
3   action to comply. We don't disagree with that. We wish  
4   they would live up to the agreement they have with us  
5   already. So to the extent we already have that agreement,  
6   we're already involved in this situation.

7           And their second recommendation was that -- I  
8   guess that was the second recommendation.

9           The first was that the agency follow the  
10   correction plan. We would agree the agency ought to  
11   follow the correction plan. So I don't think this adds  
12   liability to the Board. But if the Board wants us to  
13   think about it for another month, we could do that too.

14          PRESIDENT CARTER: Any comments from the Board?

15          VICE PRESIDENT HODGKINS: Well, I read the item  
16   very carefully for a consent item. And it seemed to me  
17   that it was the matter of a grand jury has, for whatever  
18   reason, come across the fact that there is an area where  
19   property maintenance per a, I am going to say a, typical  
20   project cooperative agreement is not being done, and they  
21   were trying to get that done and asking us to confirm  
22   that, in effect, there was an agreement that said that  
23   maybe it should be done.

24          And I thought that the letter was an appropriate  
25   letter to send, both from the standpoint of helping locals

1 by confirming that we agree these are the facts, and  
2 because we have an interest in saying that the maintenance  
3 from a flood control standpoint on this project is  
4 properly done.

5 So it seems to me, it was appropriate to send the  
6 letter, and there wasn't any kind of a liability issue.  
7 In fact, if we didn't respond, we weren't helping somebody  
8 to get a local agency to focus on taking care of the  
9 maintenance. And that, I doubt there's any liability.

10 But from the standpoint of the Board's goal here  
11 to advance flood control, we should try and help the local  
12 agency get it taken care of, or the grand jury get it  
13 taken care.

14 PRESIDENT CARTER: Any other comments from the  
15 Board?

16 Staff?

17 Very good.

18 So we will entertain a motion on Item 7G.

19 VICE PRESIDENT HODGKINS: I move we approve the  
20 draft letter and direct staff to work with the president  
21 to get it signed and sent.

22 MEMBER BROWN: I will second it.

23 PRESIDENT CARTER: Okay. There's a motion and a  
24 second.

25 Any further discussion?

1           Okay. Mr. Punia, would you call the roll?

2           EXECUTIVE OFFICER PUNIA: Board Member John Brown?

3           MEMBER BROWN: Aye.

4           EXECUTIVE OFFICER PUNIA: Board Member Rose Marie

5 Burroughs?

6           MEMBER BURROUGHS: Aye.

7           EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

8           SECRETARY DOHERTY: Aye.

9           EXECUTIVE OFFICER PUNIA: Board President Ben

10 Carter?

11          PRESIDENT CARTER: Aye?

12          EXECUTIVE OFFICER PUNIA: Board Vice President

13 Butch Hodgkins?

14          VICE PRESIDENT HODGKINS: Aye.

15          EXECUTIVE OFFICER PUNIA: Board Member Emma

16 Suarez?

17          MEMBER SUAREZ: Aye.

18          PRESIDENT CARTER: Motion carries unanimously.

19          All right. At this time, we're moving on to

20 Item 8 on our agenda. Assurance Agreement, Knights

21 Landing Ridge Draining District, Yolo County.

22          Mr. McGrath, thank you for your patience.

23          Good morning.

24          MR. McGRATH: Good morning, President Carter,

25 Board Members, General Manager Jay Punia.

1 I'm here today to ask for the Board's approval of  
2 an assurance agreement between the Board and Knights  
3 Landing Ridge Draining District.

4 First off, my name is Eric McGrath. I'm with the  
5 Department of Water Resources, Division of Flood  
6 Maintenance.

7 At this time, I would like to give you some of the  
8 history of the project and explain the need for this  
9 agreement.

10 The project is located in the town of Knights  
11 Landing. To the north and west, as you can see in this  
12 map here, there's a segment of levee about 1200 feet long  
13 that runs along the south end of Sycamore Slough between  
14 Knights Landing Ridge Cut and the Sacramento River.

15 In 2005 -- or 2006, sorry, a local developer was  
16 looking to do some work in this area and asked for an  
17 encroachment permit from the Board. At that time, the  
18 Board identified that there was no maintaining agency  
19 responsible for this area.

20 And as part of the Water Code, DWR went out to  
21 identify a local maintaining agency, sent letters to Yolo  
22 County Service Area 6 and Knights Landing Ridge Cut who  
23 have adjacent responsibilities. And did not receive  
24 positive response.

25 So the Department of Water Resources proceeded

1 with formation of a maintenance area and began that  
2 process.

3 When DWR investigated the levee, we found several  
4 deficiencies such as lack of a gravel crown road, access  
5 gates, excessive vegetation, and many rodent holes. So  
6 these deficiencies needed repair and the maintaining  
7 agency needed to be identified.

8 The developer worked with DWR inspectors in the  
9 Knights Landing Drainage District to make these  
10 improvements. And following several district meetings  
11 with Knights --

12 Yes?

13 MEMBER BURROUGHS: Could you pull your microphone  
14 up. It's a little hard to hear you. Thank you.

15 MR. McGRATH: Following several district meetings  
16 with the Knights Landing Drainage District, they  
17 conditionally agreed to accept maintenance  
18 responsibilities, and DWR's especially thankful to Luis  
19 Bear, the general manager of Knights Landing Ridge  
20 Draining District and of Dan Boatwright of Castle  
21 Companies, the developer, for working towards  
22 rehabilitating this orphan levee and bringing it into  
23 compliance with federal standards.

24 So we're pleased knowing that the results of the  
25 improved levee are protecting Knights Landing and that



1     somebody is stepping up to take responsibility of  
2     maintaining it.

3             So at this time I would like to request the  
4     action, that the Board formally accepts an assurance  
5     agreement between Knights Landing Ridge Drainage District  
6     and the Central Valley Flood Protection Board, that  
7     provides assurances to maintain, operate, repair, replace,  
8     and rehabilitate the levee by authorizing Ben Carter and  
9     Nancy Finch to sign the agreement.

10            Are there any questions?

11            PRESIDENT CARTER: Are there any questions for  
12     Mr. McGrath?

13            Hearing none, are there any members of the public  
14     that wish to comment on this? Representatives from the  
15     area?

16            Very good.

17            Any comments from the Board, questions?

18            All right.

19            We'll entertain a motion on a motion to approve or  
20     deny the requested action per the staff recommendation.

21            MEMBER BROWN: Mr. Chairman, I make a motion that  
22     we approve the requested agreement.

23            SECRETARY DOHERTY: And I will second that.

24            PRESIDENT CARTER: Okay. We have a motion and a  
25     second.

1 Any further discussion?

2 Mr. Punia, would you call the roll?

3 EXECUTIVE OFFICER PUNIA: Board Member John Brown?

4 MEMBER BROWN: Aye.

5 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie

6 Burroughs?

7 MEMBER BURROUGHS: Aye.

8 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

9 SECRETARY DOHERTY: Aye.

10 EXECUTIVE OFFICER PUNIA: Board Member Emma

11 Suarez?

12 MEMBER SUAREZ: Aye.

13 EXECUTIVE OFFICER PUNIA: Board Vice President

14 Butch Hodgkins?

15 VICE PRESIDENT HODGKINS: Aye.

16 EXECUTIVE OFFICER PUNIA: Board President Ben

17 Carter?

18 PRESIDENT CARTER: Aye.

19 EXECUTIVE OFFICER PUNIA: The motion carries

20 unanimously.

21 Thank you, Mr. McGrath.

22 MR. McGRATH: Thank you.

23 PRESIDENT CARTER: We move on to Item 9, West

24 Sacramento Area Flood Control Agency, Yolo County.

25 Consider a letter to the Sacramento District, U.S. Army

1 Corps of Engineers, requesting Section 408 approval to  
2 alter the federal flood control project by constructing  
3 475 feet of slurry cutoff wall and flattening levee slopes  
4 on the west, or right, bank of the levee of the Sacramento  
5 River, south of the I Street Bridge in Yolo County.

6 Mr. Fua?

7 SUPERVISING ENGINEER FUA: Thank you, President  
8 Ben Carter, and good morning, Members of the Board.

9 For the record, my name is Dan Fua, staff engineer  
10 for the Central Valley Flood Protection Board.

11 The West Sacramento Area Flood Control Agency is  
12 currently conducting a comprehensive assessment of the  
13 levee system that surrounds the city.

14 At the board's meeting last month, you were  
15 briefed on their levee improvement program. Part of the  
16 program is to identify areas or reaches in the levee  
17 system where they could conduct improvements of the levee  
18 or mitigating deficiencies where it's easy or quick to  
19 implement. It's called the early implementation projects,  
20 and that's part of the levee improvement program. They  
21 have a criteria where they evaluate a certain reach and  
22 determine that, you know, this could be a tentative site  
23 for early implementation project.

24 The I Street Bridge South Sac Project is  
25 identified as one of those early implementation projects.

1           The agency had submitted a permit application to  
2   the Board to construct the mitigation improvements --  
3   mitigation and improvements to this reach.

4           And because it's an alteration of the project  
5   levee, it's necessary that we receive Section 408 approval  
6   from the U.S. Army Corps of engineers.

7           So today, the West Sacramento Area Flood Control  
8   agency is requesting the Board to send a letter to the  
9   U.S. Army Corps of engineers requesting Section 408  
10  approval.

11          This is the map of the city of West Sacramento and  
12  you probably saw this last month. This also shows the  
13  levee system that protects the city, protects the city  
14  from flooding from the Sacramento River, the Sacramento  
15  Bypass, the Yolo Bypass and the deep water ship channel.

16          The I Street Bridge project -- I can't make  
17  this -- I will point to you the I Street Bridge project  
18  location.

19          Well, anyway it's on the northeast section of the  
20  Sacramento River, west-north levee. I don't know if you  
21  can see that.

22          And this is a close-up view of the project area.  
23  You can see, this is the I Street Bridge. Let me go back  
24  to the previous slide to point out to you the location of  
25  the project. It's right here.

1           This is the close-up aerial view of the project.  
2   This is the I Street Bridge. This is the Sacramento River  
3   here, and this is about 500-feet-length stretch of the  
4   levee.

5           So anyway, how they came up with this  
6   recommendation, they had conducted a problem  
7   identification study and also hydraulic reports. So they  
8   identified problems in this reach.

9           In addition, they did a detailed analysis of this  
10   reach. They conducted a geotechnical investigation  
11   stability analysis and ground survey.

12          So based on those studies, they have identified  
13   the levee deficiencies of this reach. They found out that  
14   there's a through-seepage and an underseepage problem,  
15   which was identified through modeling, based on the  
16   geotechnical information that we had evaluated in the  
17   study.

18          So essentially, the final evaluation of the  
19   geotechnical report is that the levee embankment is made  
20   of sandy materials, and the modeling determined that  
21   there's a through-seepage problem there and also an  
22   underseepage problem, using the water surface elevation of  
23   200-year flood plus 3 feet.

24          On the other water surface elevations that were  
25   used, for example, the design water surface elevation, the

1 100-year flood elevation, there were no underseepage  
2 problems identified.

3 A stability problem was also identified under the  
4 steady state case. Again, this determination was made  
5 through modeling. Groundwater survey and levee evaluation  
6 determined that the levee also has a geometry problem, an  
7 erosion problem, and freeboard.

8 So to mitigate those problems, with exception of  
9 erosion and freeboard, the agency proposed to construct a  
10 475-foot long and 40-foot deep slurry cutoff wall, and  
11 also to flood in approximately 50 feet of waterward slope.

12 I would like to correct my staff report. The  
13 flattening of the slope is waterward, not landward, as I  
14 wrote in my staff report, to 3 to 1, to meet the Corps  
15 criteria.

16 So this is the project plan profile. And  
17 essentially, the cutoff wall starts from Station 194, and  
18 after Station 200, so it's about 475 feet.

19 And the area where they propose to flatten the  
20 slope is right here. That's the waterward side of the  
21 levee slope, is the southern most part of the project  
22 reach.

23 This is the geologic profile of the site, and this  
24 actually was used as the basis for the design of the  
25 cutoff wall. So essentially, as I've said earlier, the

1 levee is made of poorly-graded sand and silty sand.  
2 Underneath the embankment is about 5 to 8 feet of sandy  
3 silt and lean clay layer. That serves as the semipervious  
4 blanket.

5 Underneath the is about 5 to 15 feet of sand, and  
6 that's the area where the water seeps through and could  
7 contribute to the underseepage problem.

8 Below that silty sand is another 4 to 9 feet of  
9 sandy silt and lean clay. That's another semipervious  
10 material. So the design is to extend the cutoff wall at  
11 least 5 feet beyond the second lean clay layer.

12 These are the borings that they did in this reach,  
13 and based on the interpretation of, you know, the soil  
14 profile, the soil profile was derived from.

15 So anyway, that formed the basis of their design  
16 of the cutoff wall, and based on their modeling, they  
17 determined that this is the right way to go, to resolve or  
18 to solve the seepage and underseepage problem and the  
19 stability problem.

20 So based on that, based on the review of staff by  
21 the technical documents that they submitted to us, staff  
22 recommends that the Board approve sending the 408 letter  
23 to the U.S. Army Corps of Engineers for approval of the  
24 proposed project.

25 In addition, staff is also recommending that the

1 Board dedicate the authority to the general -- to the  
2 executive officer to sign the letter. A draft letter is  
3 provided in your packet.

4 That concludes my presentation. And if you have  
5 any questions, I will be glad to answer.

6 PRESIDENT CARTER: Thank you, Mr. Fua.

7 Are there any questions for Mr. Fua?

8 VICE PRESIDENT HODGKINS: Dan, I note that the  
9 plan and profile shows at least that the levee is going to  
10 be raised slightly, but is it being raised to the  
11 '57 profile?

12 SUPERVISING ENGINEER FUA: There is no proposal to  
13 raise the levee at this time. There is a plan to raise  
14 some of the parts of the levee where it is actually below  
15 the 200 plus three -- the 200-year plus 3.

16 Right now, and I can -- actually, the I Street  
17 Bridge, the 1957 design, is actually about -- correct me  
18 if I'm wrong, but there's ample freeboard there. I think  
19 it's about 6 feet. So there's no need to raise the levee  
20 at that section.

21 I don't know if I've answered your question. But  
22 even at the 200-year plus 3 feet, there's only a few  
23 portions where the levee needs to be raised.

24 Did I answer your question?

25 And this project has no levee raising component.



1 VICE PRESIDENT HODGKINS: Okay.

2 And then my second question would be,  
3 theoretically, I thought that there was a requirement for  
4 a 3-to-1 waterside slope to be maintained as part of the  
5 maintenance assurances that are provided in the PCA. So  
6 in effect, the 3-to-1 slope restoration doesn't need 408  
7 approval. Would that be correct?

8 I don't object to it being in the letter. I'm  
9 just trying to understand whether that's the case or not.  
10 That seems to be the maintenance.

11 SUPERVISING ENGINEER FUA: Yeah, you are probably  
12 correct. I guess to be safe, because we have to go back  
13 on the original as-built drawings to what actually was the  
14 slope in this area. But you're right, especially the  
15 waterward slope is supposed to be 3 to 1, even with the  
16 old, you know, Corps standards. So that is an option.

17 VICE PRESIDENT HODGKINS: No. Thanks. I think  
18 mostly I was wanting to be sure my understanding was  
19 correct.

20 SUPERVISING ENGINEER FUA: Yeah. You're right.  
21 3 to 1 is an old standard.

22 PRESIDENT CARTER: I want to let the record  
23 reflect that Board Member Teri Rie has arrived and joined  
24 the discussion.

25 Are there any other questions for Mr. Fua?

1           Mr. Fua, not being a geotechnical engineer, are  
2   you -- and we have some experience with slurry cutoff  
3   walls, some good, some not so good. Has staff done a  
4   adequate analysis of the geotechnical borings and whatnot,  
5   that you are convinced that the slurry wall is going to be  
6   adequate in terms of depth to solve the problem we're  
7   going after?

8           SUPERVISING ENGINEER FUA: At this point, since  
9   we're only asking for a 408 approval, since my review is  
10   just cursory, we will probably go into the detail when we  
11   come before you for a permit. But right now, I can tell  
12   you that the area doesn't really have a lot of clay.

13           In fact, the lean clay, as I've said, the lean  
14   clay, about 5 to 8 feet, and then there's the sand, and  
15   underneath the sand, 5 to 15 feet of sand, and underneath  
16   it is about another 4 to 9 feet of lean clay.

17           But below that, say 40 feet, about 65 feet below  
18   the clay is gravel and sand. So essentially, the --  
19   there's not much there to connect your cutoff wall. You  
20   are -- we are limited to the second layer, which is about,  
21   I don't know, about 35 feet below the embankment.

22           So there is not much to tie it in.

23           PRESIDENT CARTER: Okay. And to what extent is  
24   the Corps going to review the geotechnical analysis as  
25   part of their 408 approval process? I don't know if you

1 can answer that, or perhaps Ms. Nagey, who's in the  
2 audience, might be able to answer that.

3 SUPERVISING ENGINEER FUA: I'm pretty sure that  
4 based on past projects, they will review it extensively.  
5 And if Megan has something to add now.

6 PRESIDENT CARTER: I see Megan nodding her head  
7 out there saying, yes.

8 SUPERVISING ENGINEER FUA: Yes. They will review  
9 it extensively.

10 PRESIDENT CARTER: Very good. That's all I have.

11 Any other questions? Okay.

12 Mr. Punia?

13 EXECUTIVE OFFICER PUNIA: No.

14 PRESIDENT CARTER: You are pulling the microphone  
15 away, getting prepared.

16 Then the Board will entertain a motion to act on  
17 Item No. 9, West Sacramento Area Flood Control Agency,  
18 Yolo County.

19 SUPERVISING ENGINEER FUA: Excuse me, Ben. I  
20 think the applicant wants to address the Board.

21 PRESIDENT CARTER: I'm sorry. I assumed that  
22 since I didn't have a card and I -- and West Sac did make  
23 their presentation last month, that they did not want to  
24 talk to us.

25 MR. RUZICH: President Carter and Members of the

1 Board, I'm Ken Ruzich. I'm manager of the Sacramento Area  
2 Flood Control Agency.

3 We're just here if you have any questions. If you  
4 don't have any questions -- Eric Nagy with HDR has  
5 actually done the geotech work and the designer is here if  
6 you have any questions.

7 PRESIDENT CARTER: Any questions for the  
8 applicant?

9 Thank you for being here.

10 So we will entertain a motion to --

11 MEMBER BURROUGHS: So moved.

12 PRESIDENT CARTER: Okay.

13 MEMBER BURROUGHS: I was going to say, as per  
14 staff recommendations.

15 PRESIDENT CARTER: Okay. So we have a motion to  
16 approve sending a letter to the U.S. Army Corps of  
17 Engineers, asking for 408 approval to alter the federal  
18 flood control project levee at the I Street Bridge, and  
19 also to delegate to the executive officer the signing of  
20 the letter to the Corps.

21 SECRETARY DOHERTY: And I will second that.

22 PRESIDENT CARTER: And we have a motion and  
23 second.

24 Any further discussion?

25 Mr. Punia, would you call the roll?

1 EXECUTIVE OFFICER PUNIA: Board Member John Brown?

2 MEMBER BROWN: Aye.

3 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie

4 Burroughs?

5 MEMBER BURROUGHS: Aye.

6 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

7 SECRETARY DOHERTY: Aye.

8 EXECUTIVE OFFICER PUNIA: Board Member Emma

9 Suarez?

10 MEMBER SUAREZ: Aye.

11 EXECUTIVE OFFICER PUNIA: Vice President Butch

12 Hodgkins?

13 VICE PRESIDENT HODGKINS: Aye.

14 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie.

15 MEMBER RIE: Aye.

16 EXECUTIVE OFFICER PUNIA: Board President Ben

17 Carter?

18 PRESIDENT CARTER: Aye.

19 The motion carries unanimously.

20 Thank you, Mr. Fua.

21 SUPERVISING ENGINEER FUA: Thank you.

22 PRESIDENT CARTER: At this time, we will go ahead

23 and start Item 10, our hearing and discussions.

24 So I would like to formally call the hearing to

25 order on Item 10A, which is Application No. 18159-3,

1 Sacramento Area Flood Control Agency, Natomas Levee  
2 Improvement Program, Sacramento River East Levee Phase 1  
3 Improvement Project, Reaches 1 through 4B, Sacramento and  
4 Sutter Counties.

5 And Mr. Butler from the board staff will be  
6 presenting. I just want to review our hearing process.

7 What we will do is we will have a board staff  
8 presentation. Then that will be followed by public  
9 testimony. And during the staff presentation and public  
10 testimony, Board members may ask questions at any time.  
11 And we'll -- at the end of public testimony, we'll  
12 entertain comments from the applicant, then persons  
13 supporting the application, then persons opposing the  
14 application, and finally anybody else who wishes to  
15 address the Board on the issue.

16 We will then have rebuttal of testimony by the  
17 applicant, and then Board staff may respond to the  
18 testimony presented up to that point, and then finally, we  
19 will close the public testimony portion of the hearing and  
20 the board members will deliberate, discuss, and decide on  
21 what they would like to do.

22 At that point when the Board has expressed a  
23 certain desire to take action in a certain direction, the  
24 applicant and the staff may briefly comment on any  
25 proposed change that the Board proposes as a result of the

1 deliberations. And then we'll vote.

2 So that's the process.

3 Shall we begin?

4 SENIOR ENGINEER BUTLER: For the record, I'm Eric  
5 Butler, senior engineer for the Board. Thank you,  
6 President Carter, for giving me those couple minutes to  
7 load my presentation and to lay the groundwork for the  
8 hearing.

9 Today we're back in front of you with another  
10 application from the Sacramento Area Flood Control Agency,  
11 specifically with their Natomas Levee Improvement Program.

12 This component of the NLIP is on the Sacramento  
13 River East Levee, Phase 1 improvements, reaches 1 through  
14 4B. The upstream end is in Sutter County, and the  
15 project -- crosses the county line into Sacramento County.

16 We have heard quite a bit of discussion and  
17 testimony on the Natomas Cross Canal Project and this  
18 project at the December and January Board meetings.

19 So I have endeavored to minimize the amount of  
20 detail that I will be providing to you today. You also  
21 have a copy, hard copy, of my presentation in front of  
22 you.

23 But please stop me and ask any questions if you  
24 feel I am being too brief.

25 For the record, the presentation hard copy does

1 include a page of late corrections to documents. I do not  
2 intend to read these. But they are minor textual changes  
3 that I believe do not impact the overall presentation or  
4 my recommendations. But I am just calling this to your  
5 attention to make it part of the record.

6 Again, today we are considering Permit Application  
7 No. 18159-3 BD, specifically to place landside fill to  
8 raise and widen approximately 22,800 feet of the existing  
9 east project levee -- this would be the left bank as we're  
10 looking downstream of the Sacramento River -- and to  
11 install seepage remediation measures including seepage  
12 berms, relief wells, and surface drains.

13 The project area along the Sacramento River,  
14 again, begins at the Natomas Cross Canal, which is river  
15 mile 78.9 in Sutter County, continuing downstream to  
16 approximately river mile 74.6, north of Elverta Road in  
17 Sacramento County.

18 And as you recall, we approved sending a Section  
19 408 request in the form of a letter to approve these  
20 alterations to the Sacramento River Flood Control Project  
21 to the U.S. Army Corps of Engineers, Sacramento District,  
22 at our January meeting. And that letter was packaged  
23 along with a substantial amount of supporting  
24 documentation that was provided by SAFCA and was delivered  
25 to the Corps on February 14th, and they are currently



1 reviewing the package.

2           The Natomas Basin location, just to refresh people  
3 where it is, northern Sacramento, southern Sutter  
4 counties. It's bounded on the north by the Natomas Cross  
5 Canal; on the west by the Sacramento River; on the south  
6 by the American River; and along the east by both the  
7 Pleasant Grove Creek Canal, and the Natomas East Main  
8 Drainage Canal, the whole basin.

9           MEMBER BURROUGHS: Could you use your pointer to  
10 show me where on the map you are talking about?

11           SENIOR ENGINEER BUTLER: Sure.

12           Okay. The northern Natomas Cross Canal. This was  
13 the permit that was approved at the January meeting;  
14 here's the Sacramento River on the western boundary; this  
15 is the American River, which forms a part of the southern  
16 boundary of the Natomas Basin; and then the Pleasant Grove  
17 Creek Canal, basically the waters from western Placer  
18 County flow into this canal and they drain to the north  
19 and west into the Natomas Cross Canal. And then at a  
20 point known as Sankey Gap, the flows move southerly in the  
21 Natomas East Main Drainage Canal, which is also called  
22 Steelhead Creek; and then eventually down to the American  
23 River.

24           And the entire Natomas Basin levees are operated  
25 and maintained by Reclamation District 1000.

1           The goals and history of the NLIP, briefly, to  
2   achieve at least a hundred-year protection by the end of  
3   year 2010; and to achieve 200-year protection by the end  
4   of 2012.

5           There are required improvements to the perimeter  
6   levee system around the basin, including the cross canal,  
7   south levee, the Sacramento River east levee, and the  
8   Pleasant Grove Creek Canal west levee; as well as  
9   improvements to the Natomas East Main Drainage Canal west  
10   levee and the American River north levee and are also  
11   likely to be required as part of the Natomas Levee  
12   Improvement Program.

13          The design of the improvements to the Natomas  
14   basin levees, as being carried out by SAFCA, are  
15   anticipated to be included as components of the Common  
16   Features Project, currently under reevaluation by the U.S.  
17   Army Corps of Engineers.

18          Detailed NLIP history is provided as staff report  
19   attachment 2. And I don't intend to walk you through that  
20   again today.

21          So just to back up a little bit and show what's  
22   happened so far, I'm up here. I'm pointing to the Natomas  
23   Cross Canal. There was a short project done under Permit  
24   18159-1 2007 levee work. That's been completed.

25          The permit that you approved in January, 18159-2,

1 was for improvements to the south levee of the Natomas  
2 Cross Canal. And today, we're talking about this yellow  
3 shaded reach of the Sacramento River. This is reaches 1  
4 through 4B. This is work that is also proposed to be  
5 carried -- to begin in 2008.

6 And then as we move downriver, there would be  
7 other components that we'll bring before the Board in  
8 years 2009 and 2010.

9 The map on the left is a wide-angle shot of the  
10 proposed project location; the reaches 1 through 4B in the  
11 red box; and then on the right a little bit closer-up view  
12 where I've underlined each of the reaches. On the left  
13 side, the Sacramento Airport is right near here.

14 So briefly, just a summary of some of the  
15 important existing facilities. There was about 18 miles  
16 of the Sacramento River levee that have been divided, for  
17 planning purposes, into 20 reaches. And today, we're  
18 specifically looking at reaches 1 through 4B, which is  
19 about the upstream 4.3 miles.

20 Along this entire section, the Garden Highway is  
21 also the levee crown roadway. There's an existing  
22 10-foot-wide stability berm on the landside slope in  
23 reaches 1 through 12. Primarily on the landside, there  
24 are agricultural lands with a few rural residences. There  
25 are many private residences and boat docks along reaches 2

1 through 18. The north drainage canal, as part of RD  
2 1000's pumping system, is in reaches 4A and B. And reach  
3 4B, the southern or downstream end of the project that  
4 we're looking at today was the location of RD 1000 pumping  
5 plant 2. This was removed during, I believe, the  
6 April 2006 high water event where there was a flood fight  
7 at that location and levee repair.

8 And it is proposed to be replaced as an element of  
9 one of the components that SAFCA will bring before us in  
10 2009/2010. So that pumping plant has been completely  
11 removed from the property. There were cutoff walls  
12 previously installed downriver in reaches 12 through 20.

13 And the staff report that you have as part of your  
14 package goes into a lot more detail on all 20 reaches for  
15 existing facilities as background information.

16 The specific project improvements that are  
17 proposed as part of this permit application are placement  
18 of landside fill to construct a raised, what SAFCA refers  
19 to as, adjacent setback levee, and seepage remediation  
20 measures to include seepage berms and relief wells to  
21 address both freeboard deficiencies and seepage  
22 potentials.

23 So the adjacent setback levee, if constructed, it  
24 would effectively shift the jurisdictional levees somewhat  
25 landward. And I have some cross-sectional graphics to

1 show you in a moment.

2 The actual selection of the specific, the  
3 site-specific, seepage remediation measures to be  
4 implemented will be based on continuing review and  
5 acceptance by the Corps during the remainder of the design  
6 and approval process. We're currently sitting at the  
7 60 percent construction design level, and we're  
8 anticipating the 90 percent level being released any day.

9 So this is a cross-section of a graphic that  
10 attempts to display what the adjacent setback levee would  
11 look like.

12 To the right-hand side of the graphic is the  
13 existing levee with the Garden Highway sitting on top.

14 As we move to the left across the graphic, we see  
15 the adjacent setback levee being built right up onto the  
16 existing land side slope of the existing levee.

17 And there's various dimensions shown on here. The  
18 couple things to point out that I will bring up later is  
19 there's a drainage area here, because we're creating a low  
20 point between the crown of the existing Garden Highway and  
21 the new levee height, which will be slightly raised from  
22 the existing levee crown. And we'll talk about how we'll  
23 deal with that drainage later.

24 And also I want to point out that we will end up  
25 along here with a 50-foot maintenance easement that will

1 be granted to the Board once the project is completely  
2 built.

3           So we'll draw some of the reasons why they are  
4 proposing the construction as such. Portions of the river  
5 east levee are not high enough to provide at least 3 feet  
6 of freeboard above the 100-year water surface profile  
7 elevation. And several reaches still don't provide 3 feet  
8 above the 200-year water surface elevation. So the  
9 increased height, as we looked at in the prior graphic is  
10 designed to give us that required freeboard.

11           And here's a graphic that shows -- again, it's a  
12 picture of the whole Natomas basin. The areas in red  
13 highlight those areas where SAFCA has -- considers there  
14 to be at least 100-year level freeboard deficiencies, and  
15 you can see as we move down south, down river, there's a  
16 small area with 200-year. And then this Pleasant Grove  
17 Creek Canal will have further study required.

18           The other deficiency that SAFCA is trying to  
19 address is a seepage potential. There's been under- and  
20 through-seepage vulnerability identified in these project  
21 reaches and there's locations that exist currently that  
22 don't meet recently adopted federal criteria.

23           So the -- and here's a graphic of those areas.  
24 And again, we're pretty much talking about as I'm moving  
25 the mouse now, that's where the cross canal drains into

1 the river, and we're down to about here for this  
2 particular project.

3 So two things mainly what SAFCA is trying to  
4 remedy with this project as currently proposed, and that's  
5 freeboard and underseepage remediation.

6 This graphic shows just typical levee seepage  
7 mechanisms.

8 And as we move from right to left, from waterside  
9 to land side, you can see underseepage being depicted as  
10 being able to travel through the sand and gravel layers.  
11 These layers that convey water -- and we typically see  
12 sand boils and water seepage and other problems out here.  
13 And so the fix here is the seepage berms and such.

14 There's also -- I'm sorry. Did you have a  
15 question?

16 MEMBER BROWN: Are there piezometers there or  
17 anything there to give you the pressure on the landward  
18 side?

19 SENIOR ENGINEER BUTLER: My recollection is that  
20 there are piezometers along some of this area. I would  
21 have to ask SAFCA to comment on specific --

22 MEMBER BROWN: I wonder what the pressure is on  
23 the land side, if there is some.

24 SENIOR ENGINEER BUTLER: John or Paul, do you want  
25 to answer the question?

1           This is John Bassett from SAFCA.

2           MR. BASSETT: Good morning. John Bassett,  
3           director of engineering for SAFCA.

4           We do have piezometers that were installed both by  
5           DWR and the Corps of Engineers. I don't believe SAFCA has  
6           installed any. But those were read during the high water  
7           event, January through April 2006 timeframe, and those  
8           piezometers were used to calibrate our seepage models.  
9           Right now, the river is down, so there's no pressure on  
10          the system at the moment.

11          MEMBER BROWN: Do you recall what the pressure  
12          was, how close to ground level?

13          MR. BASSETT: It was aboveground level. Several  
14          of the water supply wells there at the toe of the levee  
15          were rendering artesian at that time.

16          MEMBER BROWN: Have you had any failures ever on  
17          downstream slopes?

18          MR. BASSETT: The 1986 near-failure was  
19          predominantly through levee seepage and washing away the  
20          landward slope. That has been since corrected by the  
21          Corps and the State under the Sac Urban Levee  
22          Reconstruction Project.

23          MEMBER BROWN: Do you have any interceptor drains  
24          to reduce that pressure?

25          MR. BASSETT: There is one drain along the north



1 drainage canal that RD 1000 installed.

2 There were some toe drains that SAFCA installed in  
3 1996, under the permit that we constructed some Natomas  
4 Cross Canal south levee improvements. It's a very shallow  
5 toe drain; not that deep. I don't believe there's any  
6 other toe drains along the Sac River side.

7 MEMBER BROWN: I was thinking that maybe  
8 subsurface drains to reduce the pressure.

9 MR. BASSETT: I'm not aware of any that have been  
10 installed.

11 MEMBER BROWN: Okay.

12 MR. BASSETT: Thank you.

13 SECRETARY DOHERTY: May I also ask a question at  
14 this point?

15 PRESIDENT CARTER: Yes.

16 SECRETARY DOHERTY: At one of our meetings, we had  
17 a man -- I think his name was Wallace -- that appeared and  
18 you have got Pleasant Grove Creek Canal changed from  
19 100-year to more evaluation needed. And they had been  
20 flooded.

21 And then you have raised the west levee of the  
22 Pleasant Grove Creek Canal, which would cause it to back  
23 up once again into Pleasant Grove. And at one point, you  
24 have a drawing, that you just went by, that had 100-year  
25 protection on the Natomas -- Pleasant Grove Creek Canal as

1 at one point needing more study, and then you have it down  
2 as 100-year protection.

3 SENIOR ENGINEER BUTLER: I'm showing you the first  
4 of the drawings that you are mentioning. There, the first  
5 drawing is a measurement, or a depiction of, those reaches  
6 that have freeboard deficiencies. And that's the one that  
7 shows Pleasant Grove Creek Canal requiring more  
8 evaluation.

9 Then we can jump to the second graphic. This  
10 refers to underseepage.

11 So SAFCA has determined that for underseepage, it  
12 is deficient to provide up to 100-year flood protection.  
13 And for freeboard deficiencies, further evaluation is  
14 required.

15 Does that clarify that?

16 SECRETARY DOHERTY: Yes. Yep.

17 PRESIDENT CARTER: And it's assumed that if there  
18 are 100-year deficiencies either in terms of top of levee,  
19 freeboard deficiencies, and through-seepage or  
20 underseepage deficiencies, that they are also deficient  
21 for 200-year.

22 SENIOR ENGINEER BUTLER: That would be correct.

23 And again, the Pleasant Grove Creek Canal, I  
24 believe, is proposed for the 2009/2010 season.

25 The next topic I wanted to talk about briefly was

1 relief wells. There were several relief wells proposed to  
2 intercept the underseepage to discharge it into RD 1000's  
3 existing drainage system, and then to ultimately pump it  
4 back into the river.

5 This is a graphic of a typical relief well,  
6 showing the river on the right, the land side, the land  
7 side berm being constructed on the existing levee, and  
8 then a relief well out in the -- below the toe of the  
9 levee. That is intercepting that water and then pumping  
10 it into -- discharging it into the drainage system.

11 And I put a note on here just to clarify. I don't  
12 want to confuse you. This graphic shows a slurry wall,  
13 and typically these were the slurry walls that I believe I  
14 referenced as being previously installed in reaches 12  
15 through 20. So at this time, they are not proposing  
16 slurry walls in the project.

17 If future design changes come about that include  
18 cutoff walls, then that will have to come back to you for  
19 further approval as modification to the permit. But as of  
20 today, we're not considering any cutoff walls.

21 We mentioned -- I mentioned briefly the drainage  
22 collection system. This isn't necessary because we're  
23 going to create a low spot between the adjacent setback  
24 levee and the Garden Highway. And so the intention of  
25 this drainage collection system is to convey runoff

1 through pipes under the Garden Highway and down the  
2 waterside slope to the new outlet structures just above  
3 the river, and then to route -- and as part of that, when  
4 the water discharges from those pipes, it will be routed  
5 over land, away from residences, and through grassland  
6 swales. And this is a picture of what we're talking about  
7 here.

8 MEMBER BURROUGHS: A question before you move on.

9 SENIOR ENGINEER BUTLER: Yes?

10 MEMBER BURROUGHS: Is there any other alternative  
11 plans that wouldn't require having to put -- having to  
12 create this place, this low spot, that would require a  
13 drainage system?

14 SENIOR ENGINEER BUTLER: I think I will let John  
15 address that.

16 MR. BASSETT: The alternative to the collection  
17 swale and the discharge pipes would be to regrade the  
18 entire Garden Highway, tipping it towards the water side  
19 of the levee.

20 One of the issues there is cost, which right now,  
21 we're avoiding having to rebuild the Garden Highway  
22 itself. The other issue is along several reaches of the  
23 Garden Highway, there are homeowners who have their front  
24 yards there. This would tip additional water into their  
25 front yards and they have expressed concern about that

1 additional drainage flowing into their front yards.

2           So this is predominantly the way we have solved it  
3 along the reach is to include the drainage swale and the  
4 cross drainage.

5           MEMBER BURROUGHS: Is there any newly developed  
6 systems like this that have this drain right in the  
7 middle? Are there any current levees with this design,  
8 with this system?

9           MR. BASSETT: Not to my knowledge, because  
10 normally the -- you know, the -- the usual setback levee  
11 is much further away from the existing one. I think we  
12 are the first one out of the blocks building this adjacent  
13 setback.

14           But this would be an issue we would have in an  
15 area that was -- where the adjacent setback levee is  
16 higher than the existing levee. Further south, where we  
17 are not raising the levee, there is no drainage swale and  
18 the water would be tipped landward as it is now.  
19 Predominantly south of the power line road.

20           MEMBER BURROUGHS: And would this water mainly be  
21 from rain?

22           MR. BASSETT: It would be just from rain. No  
23 irrigation or anything like that involved.

24           SENIOR ENGINEER BUTLER: Okay. Any further  
25 questions on the drainage pipe?

1 I will move on.

2 MEMBER BURROUGHS: Not on the drain part. Just a  
3 comment.

4 In design, just common sense, it doesn't make  
5 sense to create a low spot that's going to require having  
6 to remove all this water.

7 Continue.

8 Thank you.

9 SENIOR ENGINEER BUTLER: Okay.

10 There will also be a requirement to relocate  
11 several of the overhead utility poles along the Garden  
12 Highway at various sections. And both land side and  
13 waterside poles may be required to be removed.

14 So here's a typical graphic, again, showing from  
15 left to right. You got a relocated power pole far out  
16 from the new levee. You've got relocated secondary poles  
17 along the Garden Highway. And I think this is going to --  
18 how this actually gets done will have to be done by SAFCA  
19 in coordination with the utilities and the residences on a  
20 case-by-case basis, for each pole.

21 And I know there will be quite a bit of  
22 coordination required in doing this and minimizing the  
23 costs associated with that. But this is sort of to give  
24 you an idea of some of the challenges that lay ahead with  
25 relocation of the poles.

1           PRESIDENT CARTER: Eric, a question on that.

2           SENIOR ENGINEER BUTLER: Yes.

3           PRESIDENT CARTER: If they are relocating the  
4 utility distribution lines out, away, from the levee on  
5 the landward side, a lot of those utilities are tied  
6 directly to some of the homes that are there. How are  
7 they going to get service from the land side field back to  
8 the houses? Are they going to be coming back for another  
9 permit for utility crossings encroachments in the levee  
10 cross-section?

11          SENIOR ENGINEER BUTLER: John, correct me if I'm  
12 wrong. But I believe on the right-hand side of the  
13 graphic here, where it says "relocated secondary power  
14 pole," I believe that would be the pole that then the  
15 lines would carry aboveground, over to the homes.

16          PRESIDENT CARTER: Thank you.

17          MR. BASSETT: Actually, in most locations, the  
18 relocated secondary pole is just a replacement of an  
19 existing pole.

20          And one of the things that we'll have to do is for  
21 the area, in this area predominantly north of Riego Road,  
22 rather than having each individual home serviced by a line  
23 from the primary distribution pole, that's well away from  
24 the levee to this secondary pole, we'll run a secondary  
25 distribution system along the levee between the adjacent

1 levee and the roadway to serve the six houses, which are  
2 involved in this first section, and then maintain the  
3 primary distribution system away from the levee.

4 One of the permit conditions that you have in the  
5 draft permit is for us to work with both the Corps and  
6 your inspectors to determine how it is best to serve each  
7 one of these houses on an individual basis. We'll  
8 determine that.

9 PRESIDENT CARTER: Thank you.

10 SENIOR ENGINEER BUTLER: I mentioned earlier that  
11 we're at the 60 percent submittal. Those were given to us  
12 in November. Fifty-foot easement is planned. But the  
13 90 percent is due out any day now. And so we'll continue  
14 to work with SAFCA to review and incorporate any changes  
15 as necessary as a result of those plans. And anything  
16 major -- and one thing I touched on recently was the  
17 potential for cutoff walls. If something like that were  
18 to come into the 90 percent drawings, that we haven't  
19 reviewed to date, we would have to bring this permit back  
20 to you at some subsequent meeting for modification. So  
21 again, today's decision is only based on 60 percent plans  
22 and specifications.

23 Going into other agency comments, we have secured  
24 the endorsement of RD 1000. They had some typical  
25 conditions. They are incorporated into the draft permit



1 as attachment 1, Exhibit A.

2 DWR's FloodSAFE Early Implementation Program may  
3 consider this project for funding during the 08/09 state  
4 fiscal year. And if it were to be approved, we would  
5 likely have to work in a permit condition to state that no  
6 work would be authorized until both the Board and DWR have  
7 approved all the final, hundred percent, project plans and  
8 related information.

9 And that would be -- it's consistent with the  
10 condition that we put in the Natomas Cross Canal permit,  
11 that you approved in January, because that was an EIP  
12 project.

13 Corps of Engineers, we received from them another  
14 letter dated February 29th that basically says -- and it's  
15 incorporated as Attachment 1, Exhibit B. But it basically  
16 says that they don't have any concerns at this point with  
17 respect to 208 approval, but that they will condition  
18 their ultimate approval based totally on the 408 review  
19 process. Same thing as what we've seen in several recent  
20 permits including the cross canal.

21 And it also confirms that there is a Section 10 or  
22 a 404 permit application in progress that the Corps is  
23 working on with SAFCA.

24 Finally, I would like to go over the hydraulic  
25 impact analysis. Again, we've talked about this quite a

1 bit in the last couple of meetings. So I will try to be  
2 brief.

3 Again, the whole Sacramento River project is based  
4 on the '57 design profile, which wasn't based on today's  
5 common statistical standards, the hundred-year to 200-year  
6 event. It assumed no failures, in that flood flows would  
7 be diverted through a combination of relief structures and  
8 weirs, and that levee heights were set at least equal to  
9 the '57 profile plus up to 6 feet of additional height for  
10 freeboard.

11 Under current requirements, federal law requires  
12 our urban basins to be protected such that they can  
13 contain the hundred-year water surface elevation plus  
14 3 feet. And therefore, because the basin is participating  
15 in the NFIP, the hundred-year profile has to be  
16 considered, and it has been.

17 And our Legislature, as recently as October 2007,  
18 established 200-year as the appropriate standard for urban  
19 protection. And so the whole NLIP is also considering the  
20 200-year profile. And generally speaking, the levees  
21 along the east side of the Sacramento River generally  
22 contain that 200-year profile but without the sufficient  
23 3 feet of freeboard.

24 So therefore, this proposal is including raising,  
25 where necessary, to gain enough freeboard to contain a

1 200-year event with 3 feet of freeboard.

2 As we've discussed in the past, they are using the  
3 modified UNET one-dimensional unsteady flow model that  
4 came out of the Corps for the Sacramento-San Joaquin Comp  
5 Study, calibrated to the '97 floods. It's considered one  
6 of the best-available scientific tools for flood routing  
7 and water surface profile modeling.

8 And SAFCA's performed several runs at both the  
9 100-year and 200-year level with or without improvements,  
10 and with and without the Folsom Dam modifications that  
11 construction recently started on.

12 And again, it assumes no upstream levee failures,  
13 and that if levees are overtopped in the model, they just  
14 overtop as a weir. They don't fail.

15 So the low sections point on the west side, they  
16 assume they will overtop, but they will not fail as part  
17 of the modeling analysis.

18 Again SAFCA -- yes.

19 SECRETARY DOHERTY: Mr. Butler, you say that the  
20 modeling showed that even though the levees on the west  
21 side overtopped, they are not going to fail?

22 SENIOR ENGINEER BUTLER: That's the --

23 SECRETARY DOHERTY: When you don't we use those  
24 levees on the east side?

25 SENIOR ENGINEER BUTLER: That's the assumption of

1 the model, and that is a conservative way of modeling.  
2 Because common sense would say that if we overtop levees,  
3 we're likely to see the failure. And a lot of water would  
4 then be flowing out of the system relieving stress on the  
5 downstream channels.

6 But for modeling purposes, if you take a  
7 conservative approach, you want to look at the what-if  
8 scenario. And you say, "Okay. I'm not going to allow  
9 these levees to fail, but I will allow weir flow over the  
10 top of them." So much less water flows out of the system  
11 in a modeled approach, and therefore they can see how high  
12 the water surface profiles theoretically would be at these  
13 design floods of 100-year or 200-year magnitude.

14 SECRETARY DOHERTY: And the levee maintenance  
15 districts on the opposite side of the river have not  
16 objected to any of these plans?

17 SENIOR ENGINEER BUTLER: Well, the levee  
18 districts, some of the levee districts, on the opposite  
19 side of the river have made public comments against this  
20 project, as part of SAFCA's EIR process. And I believe we  
21 discussed those back in December or January.

22 SECRETARY DOHERTY: Okay.

23 SENIOR ENGINEER BUTLER: So again, when we're  
24 doing modeling, we have to determine some threshold at  
25 which we say, what is significant, what isn't? So what

1 SAFCA has proposed, and this is not -- this is not  
2 mandated by any Title 23 regulations. But it's SAFCA's  
3 analysis. If they saw an increase of a tenth of a foot or  
4 more, which is 1.2 inches, when comparing existing  
5 conditions against the proposed improvements, when we're  
6 running those two scenarios through the model, at any of  
7 the design flows, the '57, the 100 or 200, that they would  
8 deem that they had a significant hydraulic impact.

9           So given that, let's go over some of the proposals  
10 here, piece by piece, to evaluate. I want to show you how  
11 I looked at the various impacts. The first thing is the  
12 land side seepage berms.

13           And at the January meeting, we went through this  
14 whole process with the Natomas Cross Canal, where we  
15 looked at water seepage. And in the Natomas Cross Canal,  
16 it's a little bit different. We have a cutoff wall -- a  
17 combination of a cutoff wall and levee rise.

18           And SAFCA had done an analysis saying that at  
19 flood levels typical, to say, the '97 flood event, we  
20 might expect to see 10 cubic feet per second of seepage on  
21 average along the cross canal. Cross canal is about  
22 5 miles long.

23           And similarly, we're looking at about 4 miles of  
24 reach of the east levee of the Sac River. If there were  
25 seepage prevented by the improvements that are being

1 proposed, we would have to say what does that do to the  
2 water surface elevation. And I think we can see that if  
3 we were cutting off seepage completely, you'd have a very,  
4 very small amount of flow compared to the hundred thousand  
5 cubic feet per second or more at a flood level. And so by  
6 stopping that seepage, and keeping it in the river, you're  
7 not really going to have much of an impact there. It's  
8 just minuscule. It's theoretically believable, but I  
9 don't know how we could quantify it and actually see it on  
10 a model.

11 And John corrected me this morning. And he said,  
12 one thing we wanted to point out -- and that's the third  
13 paragraph on this side, that's not on your handouts -- is  
14 that by themselves, the seepage berms don't actually  
15 eliminate the seepage, but they force it to travel a  
16 longer path before it daylight out.

17 It's essentially taking this hydraulic gradient  
18 and doing this to it. And by slowing it down and forcing  
19 it to take that longer path, it's reducing, or minimizing,  
20 its ability to degrade or erode the levee foundation  
21 materials. So the correction basically is that what they  
22 are proposing here, we don't want to think of it as  
23 stopping the seepage, but we want to change the  
24 characteristics of the seepage, so that it doesn't have  
25 its erosive capability.

1           The hydraulic impact of the land side file, again,  
2   I'm in agreement with SAFCA that because they are not  
3   doing anything in the channel, in the existing channel,  
4   when you model the current system through the UNET model,  
5   and then rerun the model with the higher levees, there's  
6   not going to be any change at any of the three design  
7   levels. Same conclusion as January on the cross canal.

8           There is, however, a minor hydraulic impact that  
9   we need to look at, at the drainage collection system --  
10   that was the discussion we had a little bit back -- in  
11   that we will be capturing and diverting rainfall along the  
12   Garden Highway for those areas where they are building the  
13   adjacent setback levee at a higher level and they have to  
14   put in that drainage collection system and take the water  
15   out underneath the Garden Highway and down through the  
16   properties towards the river.

17           So I kind of looked at this and said what's that  
18   going to do to a flood event? You're putting some water  
19   back in the river. And really, the way I thought of this  
20   is that for those areas, you're creating a more rapid  
21   collection diversion and return of this runoff to the  
22   river than would have occurred without the pipes. You  
23   know, normally, that water is going to go out into RD  
24   1000's collection system. It's going to flow to pumps.  
25   It's going to get pumped back into the river.

1           Here, we're doing it a little earlier in the flood  
2 event. But what it would do, really, is on the rising leg  
3 of the flood, as the river is coming up for the first  
4 time, you're going to see a small contribution of runoff  
5 more quickly than you would without that system.

6           So it's just going to slightly change the shape of  
7 the runoff hydrograph. It's really not going to have any  
8 significant impact to stages in the river. I mean, you  
9 could probably -- I don't think you could even really  
10 measure it physically.

11           You might be able to model it, but it's going to  
12 be on the order of maybe a few hundredths of an inch  
13 early. It's not going to really affect the peak stages  
14 during the flood.

15           MEMBER BURROUGHS: As long as the pipe is good.

16           SENIOR ENGINEER BUTLER: As long as it works as  
17 it's designed.

18           So I want to bring up a few graphics here that we  
19 have looked at in the past. But basically, I really  
20 wanted SAFCA -- and they were great in responding to me,  
21 to provide us an easy way to compare visually the various  
22 water surface profiles that are computed by the model. So  
23 they gave me six more plots. We're not going to talk  
24 about the cross canal. We looked at those in January.

25           But we've broken up the east and west levees of



1 the Sacramento River, basically with the American River as  
2 the dividing point.

3 And these plots clearly depict the computed  
4 differences in water surface elevation at the three  
5 different design levels. They also pretty well show where  
6 the top of the levee needs to be raised.

7 So this first slide is upstream of the American  
8 River. On the right-hand side is River Mile 95, well up  
9 above Fremont Weir. And what I've done here is I have  
10 overlaid these two red bars. That's the reach that you're  
11 considering today. So on the right-hand side of the bar  
12 is the cross canal; and at the left side is the downstream  
13 end of reach 4B.

14 The red lines, the solid red line, is the  
15 hundred-year profile computed with the Folsom Modification  
16 Project in place. And you can see that the Folsom  
17 Modification Project as we get downstream towards the  
18 American River tends to decrease computed stages.

19 So what we really want to do for sort of long-term  
20 thinking here, is we look at the solid red line; we look  
21 at the solid blue line, which is the 200-year profile,  
22 with the Folsom Mods; and then we look at the much fainter  
23 top-of-levee profile.

24 And you can see here, we're on the east side of  
25 the river here, so we're on the levees that are protecting

1 the Natomas Basin. And you can see that there's a couple  
2 of locations well upstream of Fremont Weir whose current  
3 levee height are insufficient to convey the 200-year event  
4 with 3 feet of freeboard. And, in fact, here's one of  
5 those places, Lady Bug, where the model would say there's  
6 going to be water flowing out of the river. But the  
7 modelers say, don't allow it to break here. Just look at  
8 that as if it were a weir, like Moulton Weir or Sacramento  
9 Weir.

10           Where did my mouse go? There it is.

11           And then there's one location just downstream of  
12 the cross canal.

13           And you can see this line, if you -- I think on  
14 your paper copies, you probably can see great. There are  
15 some areas that don't provide 3 feet of freeboard. And so  
16 this sort of dotted orange line is a depiction of where  
17 SAFCA believes they will have to raise the adjacent  
18 setback levee to a height to provide the additional  
19 freeboard.

20           So that's kind of the summary of the model results  
21 on the east side of the river, upstream of the American.  
22 If we move downstream, still on the east side, here's the  
23 same set of profiles. They tend to separate a little bit  
24 better on the graphic, on this drawing.

25           Again, here's the American River on the far right

1 going all the way down below Freeport. And we see that  
2 there's some areas here, below I Street, where the model  
3 drops below the 200-year profile.

4 And I believe a lot of those are places where  
5 there are flood control gates that get installed in the  
6 system as part of the current protection scheme.

7 And if we move upriver again, jump across on to  
8 the west side -- so these are the levees protecting Yolo  
9 County -- we again have several locations upstream of  
10 Fremont Weir where the levees are not high enough to  
11 convey a 200-year event. So you can see that pretty clear  
12 here.

13 And then as we come downstream, so here's our red  
14 bars of the component that we're looking at today, we see  
15 that from the cross canal to about river mile 74, we got a  
16 lot of areas in here where it's going to overtop on the  
17 Yolo County side. And what Yolo County determines -- what  
18 those agencies determine to do to combat that, that's for  
19 future discussions.

20 So again, there's our reach that we are looking at  
21 today. And as we move downstream, there's one section  
22 downstream of the river mile 59 in West Sacramento that is  
23 just -- it doesn't -- it will convey the 200-year profile  
24 with the Folsom Mods, but not with 3 feet of freeboard.  
25 And actually, I believe this is the area, the triangle

1 project, that we are going to have an informational  
2 briefing on, later on.

3 So that's the summary of the hydraulic modeling.

4 PRESIDENT CARTER: Mr. Butler, with respect to  
5 your west side levee in the project area, the profiles  
6 there where it shows the top-of-levee elevations, below  
7 the 200-year, with the Folsom Dam modifications, if  
8 sometime in the future West Sacramento or Yolo County  
9 decided to raise those levees up to the 200-year flood  
10 profile, plus three feet of freeboard, is the water that  
11 is kept in, that would flow out today, kept in the river,  
12 is that significant, and would there be hydraulic impacts  
13 as a result of that? Do we know how much -- I guess I'm  
14 asking, do we know how much water is flowing out in that  
15 section, and is it significant?

16 SENIOR ENGINEER BUTLER: I'm not aware that that  
17 has been modeled unless you guys have run -- Joe, have you  
18 run a sensitivity on that? Let me ask Joe Countryman to  
19 step to the podium to further answer that question. Joe's  
20 with MBK, and they have done most of the modeling for  
21 SAFCA on this project.

22 MR. COUNTRYMAN: Joe Countryman, MBK Engineers.  
23 And my foot went to sleep. So I'm kind of hobbling up  
24 here.

25 PRESIDENT CARTER: I'm glad we're having such an

1 exciting meeting.

2 MR. COUNTRYMAN: As long as the rest stays awake,  
3 I guess I'm okay.

4 We've done a lot of different analysis, including  
5 levee failure, non-levee failure, overtopping, and. One  
6 of the things that wasn't mentioned, we did assume that  
7 the existing levee on the west side of the river is below  
8 current standard, which would indicate that it needs to be  
9 raised just to meet the '57 design profile plus 3 feet of  
10 freeboard. Okay? That -- we've considered it a  
11 maintenance deficiency, and we assumed that would happen.  
12 So we raised the levee arbitrarily in our analysis up to  
13 that level. Okay?

14 And then as far as the spill goes, they weren't  
15 huge spills, because with that raise in place, the  
16 overtopping was of a low amount. So I can't remember the  
17 exact numbers now, but it wasn't thousands of CFS.

18 MR. REINHARDT: 84 CFS.

19 MR. COUNTRYMAN: How much?

20 MR. REINHARDT: 84.

21 MR. COUNTRYMAN: 84 CFS. Which, again, is a very  
22 small amount relative to the hundred thousand CFS that's  
23 in the river at that point.

24 So essentially, I don't believe there would be a  
25 hydraulic impact if that 84 CFS was eliminated.

1           PRESIDENT CARTER: Okay. And I guess --

2           MR. COUNTRYMAN: It was kept in the river.

3           PRESIDENT CARTER: The corollary question is --  
4 and you can probably maybe deduce where I'm going from  
5 this, is looking out in the future -- systemwide  
6 improvements, maybe even in Yolo County in the rural  
7 areas.

8           But if SAFCA does this project and raises it to  
9 the proposed elevations, and let's say Yolo County raises  
10 theirs to the 200-year, will SAFCA still have the 3 feet  
11 of freeboard without making their -- making additional  
12 levee raises to their west side -- east side levees?

13          MR. COUNTRYMAN: I believe so. I mean, 84 CFS  
14 would not change that calculation.

15          PRESIDENT CARTER: You could even conceivably or  
16 conceive of a situation where the Yolo County residents  
17 might even flood fight overtopping with sandbags and  
18 whatnot and raise their levee sufficient to keep the water  
19 in, maybe not with 3 feet of freeboard, but prevent it  
20 from overtopping so they don't have a levee failure out  
21 there, as a temporary measure. And so all that water  
22 would stay in during a flood fight, potentially.

23          MR. QUALLEY: Let me correct the record in that  
24 that data that Mr. Reinhardt presented, 84 CFS, was for a  
25 different analysis on the east side of the levee, not on

1 the west side of the levee.

2 So under the 200-year flow condition, I think you  
3 are going to get quite a bit more of water leaving the  
4 system to the west.

5 MBK has done an analysis for a 500-year event  
6 assuming no water leaves the system. I don't believe they  
7 have a model result for a 200-year event, but we could  
8 definitely have him run that.

9 The 500-year event, if you ran that with no water  
10 leaving the system anywhere, jump the water by about  
11 5 feet. So even our side was deficient by 2 feet under  
12 that analysis. So we could definitely bring that data  
13 forward to you in the future, but we do not have an  
14 existing analysis that would show that.

15 MR. COUNTRYMAN: My recollection is it was several  
16 hundred CFS that overtopped. That's why I was a little  
17 surprised it would be 84. But we can provide that  
18 additional information.

19 PRESIDENT CARTER: Thank you.

20 MEMBER BURROUGHS: In your analysis, if you did  
21 not raise the levee, could you describe what your analysis  
22 showed?

23 MR. COUNTRYMAN: If you don't raise the levee,  
24 then the water surface elevation would be lower because  
25 you would have more water escaping. And that's why for

1 the design condition, that's why we raised the levee.

2 Okay?

3 So if we don't do it, the water surface elevation  
4 would be lower, and that was the base condition that the  
5 Board decided, or the state decided, you should use, then  
6 you could lower the levee on the Natomas side.

7 PRESIDENT CARTER: Please proceed.

8 SENIOR ENGINEER BUTLER: The next section I want  
9 to review before we get to the recommendations is the CEQA  
10 compliance. And just to refresh our memories, SAFCA's  
11 lead agency under CEQA, they prepared both draft and final  
12 EIRs on the full program. They addressed the  
13 comprehensive improvements for the Sacramento Metro area.  
14 At a programmatic level, I'm talking out through 2010.  
15 And this EIR included a project level analysis for the  
16 first phase of these improvements, including this  
17 component that you are looking at today, Reaches 1 through  
18 4B.

19 The Draft EIR, the DEIR, came out for public  
20 review and comment on September 2007; and the F EIR was  
21 certified in November of 2007. They are both available on  
22 SAFCA's Web site. I know, in December, I provided you  
23 with hard copies of the draft document and its  
24 attachments.

25 The Board, the SAFCA Board, they adopted findings



1 pursuant to CEQA and the CEQA guidelines including a  
2 Statement of Overriding Considerations with respect to all  
3 the significant adverse impacts identified in the Final  
4 EIR, adopted mitigation measures and a mitigation  
5 monitoring and reporting program for these impacts.

6 Board staff, acting as responsible agency, has  
7 independently reviewed the analyses in the EIRs, the MMRP,  
8 and the findings prepared by SAFCA. And we have prepared  
9 Board Resolution 2008-04, which is included in the staff  
10 report as Attachment 6, which includes in it our CEQA  
11 findings.

12 We've done the same steps as we did for the cross  
13 canal permit, which was approved in January, with respect  
14 to CEQA.

15 So my final recommendations to you today would be  
16 to approve Permit 18159-3 BD, subject to final approval  
17 condition upon us receiving Corps of Engineers 33 USC  
18 Section 408 approval to alter a portion of the flood  
19 control project. Again, that was approved in January.  
20 The letter went to the Corps in February.

21 And again, we've prepared for your signature today  
22 a draft resolution, 2004-08. It is entitled Findings and  
23 Decision Authorizing Issuance of Encroachment Permit  
24 No. 18159-D3, Sacramento River East Levee, Phase 1  
25 Improvement Project, Reaches 1 through 4B, Sacramento Area

1 Flood Control Agency, Sacramento and Sutter Counties. And  
2 it, as I said, includes our CEQA findings.

3 We also recommend that the Board direct the  
4 executive officer to take the necessary actions to prepare  
5 and execute the permit and related documents and to  
6 prepare and file a Notice of Determination under the  
7 California Environmental Quality Act.

8 And with that, that concludes my presentation and  
9 my recommendations to you today.

10 LEGAL COUNSEL CAHILL: I would note that that last  
11 recommendation is included in the resolution. So if you  
12 adopt the resolution, you will be carrying out the staff  
13 recommendations.

14 MEMBER SUAREZ: Mr. President, I have a question.

15 PRESIDENT CARTER: Please, go ahead.

16 MEMBER SUAREZ: The CEQA document we're relying  
17 on, is that the CEQA document that's been -- lawsuit has  
18 been filed against?

19 SENIOR ENGINEER BUTLER: That is correct.

20 MEMBER SUAREZ: And can somebody give us an update  
21 on the status of the litigation?

22 SENIOR ENGINEER BUTLER: Mr. Bassett.

23 MR. BASSETT: This was a matter that was before  
24 our Board yesterday. There was announced I guess a  
25 tentative agreement. Our Board agreed to stipulate -- not

1 having the right legal terms here, but a stipulated  
2 settlement agreement that, I believe, will then be taken  
3 back and processed through the court for a final  
4 determination on the lawsuit.

5 PRESIDENT CARTER: Any other questions for staff?

6 VICE PRESIDENT HODGKINS: I have some questions  
7 about the specific conditions in the permits.

8 But let me ask the first one: Who will be  
9 responsible for the maintenance of the work that's being  
10 done under this permit, which in effect is the permitted  
11 encroachment?

12 SENIOR ENGINEER BUTLER: The maintenance and  
13 operations of all the improvements that are proposed in  
14 this project would fall to Reclamation District 1000,  
15 that's correct.

16 VICE PRESIDENT HODGKINS: There's a condition in  
17 Reclamation District 1000's letter that says, "The  
18 permittee, SAFCA, is responsible for the maintenance of  
19 all of the encroachments under this permit," which is all  
20 of this work.

21 Could somebody explain to me how we're going to  
22 figure that out in ten years, when nobody is around who  
23 knows what you two agreed on?

24 SENIOR ENGINEER BUTLER: Yes, and that's something  
25 I spoke with Paul Devereux, the general manager of

1 Reclamation District 1000 about earlier this week. We  
2 recognized that there appears to be a conflict, a possible  
3 conflict in RD 1000's conditions as part of their  
4 endorsement. Basically it looks like one of the  
5 conditions says, SAFCA is responsible for O&M and then the  
6 other one contradicts that and says RD 1000 is.

7 And Paul had mentioned to me, and I will allow  
8 Paul to answer as well, that we'll work out that language  
9 so that conflict isn't there as we process the permit.  
10 But that conflict will be removed, and as my understanding  
11 is, the ultimate O&M responsibilities will reside with RD  
12 1000.

13 And Paul, do you want to add anything to that, or  
14 Jonathan?

15 PRESIDENT CARTER: I will remind you that the  
16 applicant does have an opportunity to testify on this. If  
17 you want to address it during that portion, that would be  
18 great. That would expedite things for us.

19 MR. QUALLEY: It's fairly short in that some of  
20 the issues are, whether once this is included in the  
21 project, if it is approved with the 408 approval, then  
22 does the encroachment permit actually govern versus the  
23 O&M manual.

24 The other issue is the proposition 1E early  
25 implementation project, that agreement that SAFCA will

1 have with the state requires that RD 1000 sign up as the  
2 O&M agency, since they do have the remainder of the levee  
3 system.

4 So it will be processed once the project is  
5 implemented and the funding mechanism and agreements are  
6 in place. It will be a better legal trail as to who has  
7 O&M on the levees.

8 VICE PRESIDENT HODGKINS: And is this particular  
9 condition going to be reworded in the RD 1000 letter so it  
10 doesn't say what it says now?

11 SENIOR ENGINEER BUTLER: That's my intent. And  
12 this would be one of the items, that by directing the  
13 executive officer to process the permit, we would clean  
14 this up prior to final signature on the permit.

15 PRESIDENT CARTER: Any other questions for staff?

16 SECRETARY DOHERTY: Yes. I have a question: It  
17 really bothers me when time after time in our studies we  
18 find we are to consider the system as a whole. That to me  
19 includes the west side.

20 Now, if the west side is like this and you filled  
21 in that space in the modeling to presume that, you know,  
22 it was all at the proper height, wouldn't we be  
23 responsible for what happens on the west side? I mean, I  
24 know we've got 83,000 people in the Natomas Basin, thanks  
25 to the planning department and various other things that

1 happened, and the west side is sparsely populated. But  
2 don't we still have to consider the system as a whole?

3 SENIOR ENGINEER BUTLER: I believe we did discuss  
4 that quite thoroughly at the January meeting. We had a  
5 discussion of risk shifting and what do we do with the  
6 whole system.

7 I believe the conclusion we came to was that we  
8 recognized that as part of the recent legislation, there's  
9 a mandate for the department to develop a new state plan  
10 of flood control and for our Board to adopt that. And it  
11 was my understanding that we recognized that the  
12 systemwide evaluations were still necessary and should be  
13 included in that plan of flood control.

14 And the reason we were bringing these types of  
15 projects, these early implementations or, rather, urban  
16 projects forward at this time was because of the  
17 recognition of the criticality of providing higher levels  
18 of flood protection to our urban areas now, and while  
19 there was funding available, matching funds through the  
20 bond programs and some of the local agencies were willing  
21 to go forward, we recognized that while we don't have the  
22 final systemwide plans completed, we don't want to hold up  
23 going forward with these local projects.

24 So it was my understanding that we did address  
25 your concern. And I still do have -- share that concern

1 with you. But I am comforted by the fact that we all  
2 agree that those systemwide evaluations need to be and are  
3 planned to be carried out. And ultimately, we will be  
4 sitting, evaluating those for adoption.

5 SECRETARY DOHERTY: Thank you.

6 PRESIDENT CARTER: Any other questions for staff?

7 MEMBER BURROUGHS: Comments later.

8 PRESIDENT CARTER: I think that's appropriate.

9 Okay. At this time, ladies and gentlemen, what I  
10 would like to do is call a recess for the hearing.

11 We'll take a one-hour lunch break. We will  
12 reconvene this hearing at 1:30. So we will see you then.

13 Thank you. We're in recess.

14 (Thereupon a break was taken in  
15 proceedings.)

16 PRESIDENT CARTER: Good afternoon, ladies and  
17 gentlemen.

18 Let's go ahead and continue with our hearing.  
19 Just to bring everybody back to where we were, we are on  
20 Item 10 in our published agenda today, specifically 10A,  
21 Hearing and Decisions on Application No. 18159, Sacramento  
22 Area Flood Control Association, Natomas Levee Improvement  
23 Program.

24 We have heard from staff on the presentation on  
25 the application and the situation and their

1 recommendations.

2 We will now move on to the public testimony phase  
3 of the hearing.

4 At this time, I would like to invite the  
5 applicant, Sacramento Area Flood Control Association up to  
6 testify on behalf of the application.

7 MR. BASSETT: Good afternoon, President Carter and  
8 the Board. John Bassett, director of engineering for  
9 SAFCA.

10 Your staff presented a nice, concise presentation  
11 on the project. We have made presentations, as Eric had  
12 identified, in December and January, December last year,  
13 January of this year.

14 The only thing that I wanted to remind you, the  
15 Board, is on the hydraulic modeling analysis for the  
16 condition of the west levee of the Sacramento River, which  
17 would be the Yolo Basin. By our project, assuming in our  
18 hydraulic analysis that that levee is raised to the  
19 designed profile, 1957 design profile, that actually  
20 raises the water in the river to the extent that it should  
21 be, as far as we're concerned, for that analysis.

22 And by allowing that levee to overtop without  
23 failing, then we are not relying on that levee district to  
24 fail for our flood protection. That's why we analyzed it  
25 for our design water surface, either that levee or any of



1 the other levees upstream in the system that would overtop  
2 when raised to their design profiles. By allowing them to  
3 weir water over those levees without failure, that  
4 increases the profile and the amount of water that reaches  
5 the Natomas Basin, and that we set our top of levee based  
6 on that, we're not relying on the failure of those systems  
7 for our flood protection. So as far as we're concerned,  
8 they can raise their levees up to that design profile,  
9 1957 design profile, without impacting our flood control.

10 I wanted to make that on the record.

11 And with that, I can take any questions the Board  
12 may have.

13 I don't have any other presentation.

14 PRESIDENT CARTER: Thank you, Mr. Bassett.

15 Any questions for Mr. Bassett.

16 MEMBER BURROUGHS: I have one.

17 If the Board did not approve raising the levee,  
18 would you still go forward with the design as it is,  
19 without raising it?

20 MR. BASSETT: Without the freeboard component?

21 MEMBER BURROUGHS: Uh-huh.

22 MR. BASSETT: We would still construct  
23 underseepage improvements. We would not, however,  
24 probably be able to meet the requirements that we have for  
25 FEMA which right now requires the 3 feet of freeboard on

1 the hundred-year. So that would not meet one of the goals  
2 of the project, is to be able to certify with FEMA that  
3 the levee meets their requirements.

4 PRESIDENT CARTER: Thank you.

5 Any other questions for Mr. Bassett?

6 Eric?

7 SENIOR ENGINEER BUTLER: John, I think it's just  
8 important -- I want to clarify this point. When you say  
9 in the modeling that you are raising the west levee in  
10 places to the '57 profile, by that, do you not mean '57  
11 plus 3 feet of freeboard?

12 MR. BASSETT: Yes. That's -- we take that as the  
13 design top of levee for those systems, is the water  
14 surface profile plus the 3 feet on the Sac River system,  
15 and the bypasses have additional freeboard that's  
16 identified.

17 SENIOR ENGINEER BUTLER: Thank you very much.

18 SECRETARY DOHERTY: So what you did was you raised  
19 the places where it was deficient up, and then put on the  
20 3 feet?

21 MR. BASSETT: No. I don't know if I can bring the  
22 presentation back up, Eric.

23 SENIOR ENGINEER BUTLER: Yeah. Hang on one  
24 moment.

25 SECRETARY DOHERTY: Well, I've got it. You can

1 just tell me what page to turn to.

2 MR. BASSETT: This is the fourth to the last page  
3 in Eric's handout, I believe.

4 This is the east side levee which the -- the 1957  
5 water surface profile, so the levees in this reach of the  
6 system are supposed to be 3 feet above that elevation. So  
7 to take a look at the 1957 profile here, and add 3 feet,  
8 there's the couple areas right here that would be below --  
9 that have the top of levee below the design profile for  
10 the top of levee. So we raised the top of levee and the  
11 hydraulic model --

12 SECRETARY DOHERTY: The levee I was referring to  
13 was the west levee.

14 MR. BASSETT: Yes. This is the west levee. This  
15 is the profile of the west levee. The previous profile I  
16 was pointing to was the -- two pages before that, was the  
17 east levee.

18 You can see at the top here, it says west, or the  
19 right bank, levee. So we assume that there was 3 feet of  
20 freeboard above the design water surface, which would put  
21 the design top of levee on the west side, somewhere right  
22 in here, which is approximately the hundred-year water  
23 surface profile that is under current calculations.

24 In the 200-year event, you can see the green line  
25 which is the top of levee here, this area, and this area.

1 This would be the 200-year design water surface that we're  
2 utilizing, so you would have water overtopping the west  
3 levee at these locations.

4 And what we have in the model assumed that even  
5 though you may have water going over by approximately a  
6 foot, it would not erode and fail that levee. It would  
7 just spill water out into the Yolo Basin.

8 PRESIDENT CARTER: Do you understand?

9 SECRETARY DOHERTY: Um-hmm.

10 PRESIDENT CARTER: Okay.

11 Any other -- any other questions for Mr. Bassett.

12 Yes?

13 VICE PRESIDENT HODGKINS: John, let us have an  
14 argument about the supposition that in developing the  
15 Central Valley Flood Protection Plan, the plan proposes to  
16 give 200-year flood protection, systemwide. Is your  
17 project going to have to be modified then?

18 MR. BASSETT: It depends on what the features are  
19 that are input to provide that 200-year.

20 If the existing system is just raise levees as is,  
21 where is, to provide that, then, yes, our levee may have  
22 to be raised additionally to provide that. If the  
23 analysis which -- I don't know exactly where they are at,  
24 but it sounds like George Qualley was going to come to  
25 your board next month and present some of that stuff.

1           If -- as SAFCA and the Yolo districts and the  
2 Corps have looked at in the past, if you were to widen the  
3 Fremont Weir or widen the Sacramento Weir and approve the  
4 levees along the bypass, Yolo Bypass, as needed, such that  
5 you could provide 200-year protection to those basins by  
6 lowering the water surface, then our project would not be  
7 affected. So it depends on what the state plan is.

8           VICE PRESIDENT HODGKINS: If we just raise  
9 everybody's levees to 200-year plus 3 feet, would SAFCA  
10 feel that the additional raises to their levees, needed to  
11 be made as part of the plan, affect this hydraulic  
12 litigation?

13           In other words, would you argue that because the  
14 plan of flood control is proposing to keep more water in  
15 the system, and that makes you raise your levees even  
16 higher, that that raise, in effect, is a mitigation  
17 element of the state's plan?

18           MR. BASSETT: Again, it's the viewpoint that you  
19 look at it. If that is then the state plan of flood  
20 control, the raised levees to contain that future 200-year  
21 design water surface, then the Sacramento River system,  
22 not just Natomas, or the Sacramento area improvements,  
23 levee improvements, not just Natomas, but all up and down  
24 the American River and the Pocket, that would be part of  
25 the program. Therefore, there would be technically no

1 mitigation. There would just be a project component.

2 But from the analysis that we have seen, if you  
3 were to raise the system up to 200-year level of flood  
4 protection by just containing within the existing levee  
5 channels, it will require a significant amount of raising  
6 on a number of different basins.

7 So I would imagine that you would have to come  
8 back and raise the Natomas levees. At that point, you're  
9 close to where the Corps' GRR would be concluding  
10 different options for the Pocket levee and American River  
11 levee. You would most likely have to raise those systems  
12 also. West Sac would have to raise theirs. The whole  
13 system would have to be raised.

14 VICE PRESIDENT HODGKINS: I think what I heard you  
15 say is, if it's part of the state plan of flood control,  
16 and SAFCA would participate in the work the same way  
17 everybody else has to participate in the work.

18 MR. BASSETT: Yes, we've said that a number of  
19 times in response to some of the comments from our EIR.  
20 We recognized that we're being allowed to move ahead of  
21 the state's updated plan of flood control, and we will  
22 participate with the state and the Corps and other local  
23 agencies and districts, and we're amending whatever plan  
24 that is.

25 VICE PRESIDENT HODGKINS: Would you have an

1 objection to including that kind of a condition in this  
2 permit?

3 MR. BASSETT: That we would participate in the --

4 VICE PRESIDENT HODGKINS: Same as everybody else.  
5 In whatever modifications might be required as a result of  
6 the adoption of the Central Valley Flood Protection Plan.

7 MR. BASSETT: Are you talking about improvements  
8 to other districts?

9 VICE PRESIDENT HODGKINS: Whatever the plan is.

10 MR. BASSETT: Okay.

11 VICE PRESIDENT HODGKINS: SAFCA doesn't get any  
12 benefit to claim that their future modifications are  
13 hydraulic mitigation for that plan. That's in effect the  
14 condition I'm looking for: You participate in those  
15 improvements just like everybody else does even though  
16 you've already gone ahead and done this.

17 MR. BASSETT: I think we would agree to that with  
18 the caveat that some of the funding mechanisms that we  
19 have right now would have to be looked at to make sure  
20 that, you know, as long as we are paying for improvements  
21 in our own area, yes, we can do that.

22 We have proposed a development impact fee which is  
23 not necessarily tied to the area that is contributing to  
24 that fee and which looks at future improvements to the  
25 State Plan of Flood Control. We can go outside our own

1 district boundaries with those improvements.

2 So as long as we have the funding mechanism in  
3 place, that we can get there and not preclude it by Prop  
4 218 or any other mechanism, I think we would participate  
5 in those. I know the Board has adopted that as a response  
6 to the comments that were received on our environmental  
7 document.

8 VICE PRESIDENT HODGKINS: Okay. Thank you.

9 PRESIDENT CARTER: Any other questions for  
10 Mr. Bassett?

11 Thank you, sir.

12 MR. BASSETT: Thank you. Are there -- I have  
13 several cards here.

14 Mr. Devereux, are you still in the audience?  
15 Would you like to address the Board? I assume you're in  
16 support of the project, according to the record so far?

17 MR. DEVEREUX: Good afternoon, President Carter,  
18 Members of the Board.

19 I'm Paul Devereux. I'm the general manager for  
20 Reclamation District 1000.

21 We are the local maintaining agency, and I will  
22 clarify the record for you, Mr. Hodgkins, that we will  
23 agree to operate and maintain the system upon completion.

24 The permit condition, as Eric and I have talked,  
25 was a generic condition that I typically put in



1 post-encroachment permits. But as you know, 99 percent of  
2 them are fences, walls, houses, other encroachments in  
3 which case we absolutely want the applicant to operate and  
4 maintain those and be responsible for it.

5 This is a little different story. And I  
6 inadvertently just carried that condition. But we will  
7 agree and operate and maintain the system.

8 We have worked closely with SAFCA. We're one of  
9 the members of the Joint Powers Authority. We've worked  
10 with your staff on previous permits as well as for this  
11 one.

12 Our district has endorsed this permit, and we  
13 would urge you to approve this permit so the work can get  
14 going as quick as possible.

15 These particular improvements address what we  
16 think is one of the most critical problems we face in  
17 Natomas, which is the Prichard Lake area where we've had  
18 historic seepage problems. As Eric alluded to, we had to  
19 do a flood fight in 2006. We are still in the midst of  
20 doing some emergency repairs at that site, working with  
21 the Department of Water Resources to try to address what  
22 we think is a significant seepage problem at that site.

23 And this project will then go to finally put a fix  
24 at this location. And just given the public safety and  
25 the lives and property at risk, we certainly would not

1 like to see this project delayed. And we would urge you  
2 to -- and support your staff recommendation.

3 Thank you.

4 PRESIDENT CARTER: Thank you.

5 Any questions for Mr. Devereux?

6 SECRETARY DOHERTY: Where did you say the flood  
7 fight occurred?

8 MR. DEVEREUX: It was at river mile 75.1, which is  
9 where the north drain goes into the Sacramento River. We  
10 had a pump station that we had to remove.

11 SECRETARY DOHERTY: Thank you.

12 PRESIDENT CARTER: Thank you.

13 Are there any other members of the public who  
14 would like to address the Board in support of the  
15 application?

16 Mr. Schneider?

17 MR. SCHNEIDER: Good afternoon. Thank you. I'm  
18 Jeff Schneider. I live on Garden Highway.

19 I will try to be brief and not talk about things  
20 we've talked about in the past. And I apologize first for  
21 wasting your time, given the amount of political capital  
22 that's being spent to push this project forward, I think  
23 anybody that would be considered in opposition is clearly  
24 endeavoring to undertake a futile effort. But  
25 nonetheless.

1           Today one of the things that was talked about,  
2   that we had talked about before, but was brought up  
3   differently, is this 3 feet of freeboard. This is a  
4   requirement out of Title 23 of California Code, California  
5   Administrative Code.

6           And our concern is that originally it was  
7   discussed to you as being needed for wave action. And as  
8   in further discussions, and as was presented to you today  
9   for the first time, this is also a safety net.

10          I was a naval officer during the Cold War. And  
11   one of the things that I learned of interest about the  
12   Soviets was that engineers who designed bridges for the  
13   Soviet Union, when they were completed, were required to  
14   stand underneath them while the Soviet Army filled the  
15   bridge with tanks. And it gave the engineers -- and the  
16   engineers are laughing at this. It gave the engineers a  
17   pretty good reason to overbuild the bridge.

18          And engineers as a field, have a need to overbuild  
19   and make sure that they build in a massive safety factor.  
20   If you want to look at it from their point of view, I  
21   doubt anyone would argue that. And this is the first time  
22   today that that 3 feet of freeboard has been presented to  
23   you, that this is if we're not sure about what 100- or  
24   200-year flood is. So really, this is not designed simply  
25   to stop wave action. It really has the potential of

1 holding back water if our 100- or 200-year flood levels  
2 are wrong.

3 The reason that this is important is, the homes  
4 that are within the leaves now, that were built to  
5 standards when they were approved, are relying on  
6 Mr. Countryman's statement continually that none of this  
7 project has any impact on the channel.

8 Well, the reality is, if that 3 feet of freeboard  
9 is going to be designed and built to not only deal with  
10 wave action but to potentially hold back water, if they  
11 are wrong, then it does indeed impact the channel and the  
12 height of the potential water, or the potential height of  
13 the water, excuse me, which now means that my house may  
14 indeed go underwater, not just because that 3 feet is  
15 going to stop a wave.

16 So indeed, this argument, that they are not  
17 affecting the channel, is wrong, if you believe that the  
18 3 feet of freeboard is not just to protect you from waves.  
19 And I don't expect discussion or an answer or anything. I  
20 just wanted to get these things on the record.

21 The second interesting comment that came out today  
22 was the addition of water that's going to go directly into  
23 the river from the runoff of the Garden Highway. And I  
24 will grant you, it's not a massive amount in lieu of all  
25 of the rest of the water that is going in there. But even

1 in discussions with SAFCA and other engineers that are in  
2 this room, if you go to the California data exchange  
3 center and plot out -- you can do it online. Plot out the  
4 1986 flood, and then plot out a more recent flood, the  
5 1997 flood or any of the other floods that have flooded my  
6 home, your chart would look like this. As the water came  
7 in, it went up and it stretched out a long time and then  
8 went down.

9 After Natomas, these 80,000 people, or however  
10 many people are now in this basin, along with those people  
11 come roads, sidewalks, roofs, businesses, parking lots,  
12 and a massive flood control -- or excuse me, flood sewer  
13 system, storm sewer system. A whole bunch of new pumps, a  
14 whole bunch of new pumping capacity. The water that used  
15 to go in to recharge the aquifer out in that nice big dirt  
16 basin now gets pumped very quickly into the river; so that  
17 you will see what used to go like this, goes like this,  
18 and my house gets flooded for two days and then goes away.

19 Well, once your house is flooded for two minutes,  
20 it's as good as being flooded for two years. And one of  
21 the reasons I'm sure that we could prove is that all this  
22 water that used to go in the aquifer is being pumped into  
23 the river very quickly. And so now we're just adding even  
24 more water into the river even more quickly, which means  
25 the river comes up.

1           And while the engineers will argue that, oh, it's  
2   a minor deal, when we put all these minor deals, every  
3   square inch of asphalt that makes water go into a storm  
4   sewer instead of into the aquifer goes into the river, and  
5   it goes in quickly, and that causes the river to come up  
6   fast, and we flood.

7           Thirdly, you are clearly the experts in the state  
8   of California on Central Valley flooding and as the rest  
9   of the engineers here. And I just recently have become a  
10   student of this. And I've realized in the last several  
11   months that we are following footprint by footprint  
12   exactly what happened a hundred years ago that caused the  
13   creation of the Rec Board initially. That one landowner  
14   would fill in his swamp or build a levee, and then the  
15   next guy would get flooded so he would do it. And the  
16   next guy would build a levee with a guard house on it,  
17   with guards. And suddenly, after -- and there was  
18   obviously a lot more politics involved even then.  
19   Everybody realized we can't do this; we have to do it  
20   together, but you can't do it piecemeally. We have to  
21   have a plan of all so that one guy doesn't get screwed  
22   when another guy changes his layout of the land.

23           And that's exactly what we're doing here.

24           And as was stated by one of the commissioners  
25   earlier, what happens in Yolo County? And indeed, what

1 was presented to you, that solid green line, as I read the  
2 notation of what that solid green line, it did indeed  
3 include the 3 feet. But nonetheless, I find it, with all  
4 due respect to your staff, at least cavalier to say, we'll  
5 deal with that in future discussions. That seems to me  
6 that from a historical basis, the reason you're sitting  
7 here for the last hundred years, let alone with the new  
8 legislation and your new mandate, is to not deal with  
9 things piecemeally -- in a piecemeal fashion, not to  
10 create a new word -- but to look at this as a whole and  
11 not put off to the future the problems that we're creating  
12 with any individual's project.

13 Finally, interestingly, the last thing that I  
14 heard today was something that Butch asked about. What  
15 happens if we're doing this and it was something that  
16 we're going to have to do, anyway, essentially, I think,  
17 is what you were getting to in this big project. When we  
18 do the big study, we find out what we're going to do, and  
19 SAFCA can participate in that.

20 And I guess my question, and even SAFCA's engineer  
21 brought it up, that you could do it several ways. We  
22 don't know. We don't know what the study is going to look  
23 like when you look at this entire project. And do you  
24 just pile a bunch of dirt on all the existing levees or do  
25 you do something differently? For example, reoperate the

1 weirs, reoperate the bypasses. And even Joe Countryman  
2 has told us, ad hoc, not in an official meeting, that if  
3 you did, you could potentially lower the Sacramento River  
4 by 3 feet in this particular reach. Three feet is the  
5 3 feet of freeboard that's going to end up causing the  
6 problems I talked about earlier.

7 So I guess that in that same condition, that Butch  
8 proposed, I'm wondering if SAFCA would also agree that if,  
9 in this process of study, it's determined that the  
10 200-year flood level drops, because of other changes that  
11 are made, would they been willing to cut down that 3 feet  
12 of freeboard that they are building today, to meet what  
13 the entire plan is, for the entire project?

14 And then finally, I just want to go on record for  
15 the Garden Highway Community Association that we do not  
16 agree with your CEQA findings and are in opposition to  
17 them.

18 Thank you very much. Do you have any questions?

19 PRESIDENT CARTER: Thank you, Mr. Schneider.

20 Any questions for Mr. Snider?

21 MEMBER SUAREZ: I do.

22 PRESIDENT CARTER: Yes, we do have one.

23 MEMBER SUAREZ: Yes. That statement that, on  
24 behalf of the association, for the record, you don't agree  
25 with our CEQA findings?



1 MR. SCHNEIDER: Yes.

2 MEMBER SUAREZ: Anything in particular about the  
3 CEQA findings, or just the general principal of them?

4 MR. SCHNEIDER: I think just in general, it would  
5 be easier to say just for the same reasons that are on  
6 record for the SAFCA EIR, Final EIR, and I believe that  
7 was the basis for your CEQA findings.

8 MEMBER SUAREZ: So you filed a comment as an  
9 association with SAFCA?

10 MR. SCHNEIDER: Yes, we did.

11 MEMBER SUAREZ: Okay. Thank you.

12 MR. SCHNEIDER: Thank you.

13 PRESIDENT CARTER: Thank you.

14 Are there any other members of the public that  
15 wish to address the Board on this item?

16 Mr. Foley?

17 MR. FOLEY: Good afternoon, President and the  
18 Board, General Manager.

19 I couldn't agree with the previous speaker more.  
20 SAFCA is beginning levee wars. When SAFCA -- I spoke  
21 about the Natomas South Cross Canal. When SAFCA raises  
22 one side and you're on the other side, it is as good as  
23 though they dynamited your side. It's the same thing.  
24 And you people are allowing it.

25 You cannot -- SAFCA can't deliver flood control

1 protection to Natomas because they cannot determine what's  
2 going to happen further on. And you guys sit here, except  
3 for Rose Marie, pretending that SAFCA can promise flood  
4 protection to the residents of Natomas.

5 The State of California needs to -- DWR and you  
6 guys need to get together on this.

7 You are, in effect, allowing SAFCA to dynamite  
8 someone else's levee. When you allow one person to raise  
9 a levee, the person on their side has had their levee  
10 lowered, effectively, as far as water flows. And you guys  
11 were formed to prevent that. You cannot -- it's a basic  
12 understanding that you don't seem to have is the system,  
13 the flood control system. And you can't let SAFCA or any  
14 other small agency speak as though they can deliver flood  
15 protection, because they can't.

16 They can only -- because if some other person --  
17 you brought the issue up, Mr. Hodgkins, they just can't do  
18 it. Only you people can do that. I guarantee that. But  
19 you are not doing it by allowing SAFCA permits without  
20 everything else being brought into consideration. And  
21 that is your job.

22 Thank you. I couldn't agree with Mr. Schneider  
23 more.

24 Thank you.

25 PRESIDENT CARTER: Thank you.

1 Any questions for Mr. Foley?

2 Thank you.

3 Anyone else wish to address the Board on this  
4 item?

5 Very good.

6 Does the applicant wish to rebut any of the public  
7 testimony that was given to the Board?

8 Mr. Bassett?

9 MR. BASSETT: I think the item that I will speak  
10 on is the requirement for the 3 feet of freeboard about  
11 the 200-year design. That is mandated by the recently  
12 adopted legislation, by the Legislature, or the 200-year  
13 flood protection is -- the state DWR has issued initial  
14 guidelines for what it would take to meet that in their  
15 eyes, and they do require a minimum of 3 feet. They also  
16 add some additional freeboard to address, in certain  
17 areas, the potential for climate change.

18 And one of the things that we have done in our  
19 analysis is, we analyzed the 500-year flood in the system,  
20 as we discussed earlier. And if you try to contain that  
21 within the existing levees of the system, it would raise  
22 that design profile about 5 feet.

23 So under that type of analysis with the existing  
24 system, or with the system raised to design elevations and  
25 the upstream areas, you would have anywhere from -- or

1 before you could get to that point, you would -- in a  
2 500-year event where levees were not contained in that  
3 500-year event, you would have better than a foot to  
4 3 feet of water coming over many of the upstream levees or  
5 levees opposite us. And the assumptions that they would  
6 not fail under that situation, in their existing  
7 condition, is stretching it. Lady Bug indicated she would  
8 like to have some of those style levees. But we don't  
9 think that they would hold any 500-year even with that  
10 amount of water coming over the top.

11 If you took that 500-year failure analysis, that  
12 ends up bringing the resultant water surface about a foot  
13 below our 200-year design profile, so that even though we  
14 have freeboard, which is required by the state, is  
15 required by FEMA, is required for wind and wave action, we  
16 feel it is unlikely that you would actually see a uniform  
17 water surface not driven by wind and wave. That would  
18 encroach into that because of that type of flood, you  
19 would have water escaping the system and failing levees  
20 elsewhere. I don't think it would get down to Natomas  
21 because of where we sit south of the -- or downstream of  
22 the Fremont Weir. Any large amounts of water in addition  
23 to above a 200-year storm spills out into the bypass and  
24 doesn't necessarily get down to the Natomas area.

25 Other than that, I can take any other specific

1 questions that you may want responded to based on the two  
2 members of the public.

3 SECRETARY DOHERTY: Are you familiar with the Yolo  
4 Bypass? You say the Fremont Weir and you talked about the  
5 bypass.

6 MR. BASSETT: Yes. Not the specifics, but yes, I  
7 am familiar.

8 SECRETARY DOHERTY: Has it ever broken any levees  
9 or overtopped in the bypass, that you are aware of?

10 MR. BASSETT: I think that under -- I'm getting  
11 confused here. Under presentations that I have seen Joe  
12 Countryman make, which I've been at several. So I think  
13 he presented to the Corps of Engineers and certain members  
14 of your staff were there.

15 A slide was shown, levee breaks in the system. I  
16 think there was one on the other side. I don't know if it  
17 was a bypass break or one of the tributary streams. So I  
18 don't know if Joe can come up if he knows if there's been  
19 a Yolo Bypass break.

20 MR. COUNTRYMAN: I don't believe there's been a  
21 Yolo Bypass break, but in 1997, in the southern end of the  
22 Yolo Bypass on the west side, the levee was potentially  
23 outflanked there. There had to be a flood fight stage to  
24 keep the levee from being outflanked where Pudah Creek  
25 comes in there.

1           SECRETARY DOHERTY: So you are meaning where it  
2 was going to come around and come back at --

3           MR. COUNTRYMAN: Go around the end of the levee,  
4 yes.

5           On the west side, the levee stops and starts  
6 again. There's a gap along Pudah Creek there where there  
7 is no levee. At that location, it was trying to go around  
8 the south side of that levee. There was no failure that I  
9 know of.

10          SECRETARY DOHERTY: Because I believe,  
11 Mr. Countryman, we had a discussion here one day that the  
12 wave wash in this stretch of the river is negligible. And  
13 we're talking about the freeboard because of wave wash and  
14 overtopping. But this section had not had a wave wash and  
15 an overtopping problem.

16          What I was wondering, and the reason I asked about  
17 the bypass, but you answered my question, was because if  
18 you increased the size of the Fremont Weir and flushed  
19 some of that water out into the bypass, would that relieve  
20 some of the pressure on the Natomas area of the Sacramento  
21 River?

22          MR. COUNTRYMAN: Yes.

23          SECRETARY DOHERTY: So that might be easier. You  
24 still might have underseepage, which would have to be  
25 cared for.

1           MR. COUNTRYMAN: I don't know about it being  
2 easier, but you could -- we've done studies that show  
3 widening the Fremont Weir would lower the water surface  
4 elevation.

5           SECRETARY DOHERTY: Thank you.

6           PRESIDENT CARTER: Rose Marie?

7           MEMBER BURROUGHS: Thank you.

8           In all of your drawings, you show trees on the  
9 water side of the levee. Could you speak to that issue?  
10 And are you aware of the new policy that's been  
11 implemented about vegetation on the waterside of the  
12 levees?

13          MR. BASSETT: Yes. We show in the drawings and in  
14 the photos we have, there are a significant number of  
15 trees on the waterside of the levee.

16          One of the reasons we moved to the adjacent  
17 setback levee concept was to allow, to the extent they can  
18 be -- but the policy is yet being finalized, but to allow  
19 what the Corps guidance has identified as a root zone that  
20 is outside the technical 3-to-1 slope on the waterside of  
21 the levee.

22          By moving the levee landward, that provides  
23 additional space for those trees and for the other  
24 encroachments that are on the levee -- both, you know, the  
25 houses, the walls, other things like that. Allows the

1 system a little more leeway, and those encroachments would  
2 not necessarily affect the structural integrity of the  
3 levee.

4 We recognize that in one of your presentations  
5 today on the inspection branch and their results, one of  
6 the things they were looking at is visibility and access.  
7 We recognize that those trees and the encroachments on the  
8 water side of the levee, even with our setback levee,  
9 there will have to be some actions to address the  
10 visibility and access conditions that are out there right  
11 now.

12 And we are -- would be working with the Corps, the  
13 DWR, your staff, and RD 1000, to look at each of those  
14 encroachments and determine whether or not there needs to  
15 be something done with them to bring them into the current  
16 state compliance for visibility and access.

17 MEMBER BURROUGHS: And one last question: In the  
18 report, it is stated that it does not directly alter. And  
19 I want to know, if it does not directly, what does it  
20 indirectly affect, if there is any information on the  
21 indirect effects.

22 MR. BASSETT: Can you point out the page number?

23 MEMBER BURROUGHS: This is on the hydraulic impact  
24 on the landside fill.

25 There isn't a page number. It just says hydraulic



1 impact of land side fill.

2 MR. BASSETT: Okay.

3 MEMBER BURROUGHS: "SAFCA has stated that because  
4 of the land side improvements proposed for the Sacramento  
5 River east levee in Reaches 1 through 4B do not directly  
6 alter its hydraulic cross-section, the flow-carrying  
7 ability of the river is not affected by the proposed land  
8 side improvements.

9 MR. BASSETT: That is a -- kind of a qualitative  
10 look. We have done the quantitative look, which is the  
11 profile hydraulic analysis. But the qualitative look is,  
12 if you don't physically go in and modify the cross-section  
13 of the river, we're not adding fill to the water side of  
14 the levee. We're not adding significant bank protection  
15 projects that would modify the cross-sectional carrying  
16 capacity of the river.

17 There are no hydraulic impacts because we're doing  
18 all of our work on the land side of the levee so that  
19 there are no impacts associated with any of the project  
20 components because they are done landward of the existing  
21 levee and do not modify the cross section.

22 MEMBER BURROUGHS: Thank you.

23 PRESIDENT CARTER: Mr. Brown?

24 MEMBER BROWN: I yield to the lady.

25 SECRETARY DOHERTY: Oh, thank you.

1           Mr. Bassett and Mr. Hodgkins, I want to make sure  
2 I understand a point you were trying to make, I think.

3           Were you trying to make it a point that funds,  
4 development funds, that they collect didn't have to stay  
5 within their area but could conceivably go across the  
6 river to help those people? Or did I just work that into  
7 it?

8           VICE PRESIDENT HODGKINS: That is, I believe, a  
9 fact. But that's not the point I was trying to make. The  
10 point I was trying to make is that in the situation that  
11 we have here is, the Legislature has mandated that in  
12 2012, I believe, there will be a Central Valley Flood  
13 Protection Plan.

14           The Legislature has also mandated that projects to  
15 provide improved protection for urban areas can go forward  
16 prior to the adoption of that plan, providing that there's  
17 a finding made by, actually, the director of the  
18 Department of Water Resources, that, among other things,  
19 those projects don't impact adversely the State's Plan of  
20 Flood Control.

21           So despite the constant pressure not to piecemeal  
22 it, even the Legislature is piecemealing it and telling us  
23 we have to piecemeal it.

24           What I was looking for is, if we could incorporate  
25 a condition into this permit that, in effect, says, as a

1 result of your having gotten a permit to move forward with  
2 the project early in the process, you still agree that  
3 whatever plan is adopted in the future, you will  
4 participate in that plan in the same manner that every  
5 other local flood control agency has to participate in  
6 that plan.

7           And my desire there is to avoid, depending on what  
8 that plan is, getting into arguments, when that plan comes  
9 forward, that these early projects now have to go out and  
10 make changes and that those changes are not their  
11 responsibility because they did their work ahead of time.  
12 That's a burden that should be placed on everybody else in  
13 the system. And as we get into this permit, I'm going to  
14 ask the Board to consider adding that kind of a condition  
15 to this permit.

16           And the fact that SAFCA, assuming they do go ahead  
17 with their development fee and they have the ability to  
18 spend that outside of their jurisdiction, that makes it  
19 easier for them to participate in the statewide plan of  
20 flood protection if there is a need for them to  
21 participate. Maybe there won't be. Maybe they would have  
22 anticipated exactly what that plan is going to be. I know  
23 they are trying to do that. But I don't think any of us  
24 can be certain what the plan will say.

25           SECRETARY DOHERTY: Thank you.

1 PRESIDENT CARTER: Mr. Brown?

2 MEMBER BROWN: A two-part question: Assuming that  
3 the levees stand as they are now, and reiterate what  
4 stage, I'm assuming that both sides, east and west, would  
5 overtop at about the same time; is that correct?

6 MR. BASSETT: And under existing conditions today?

7 MEMBER BROWN: Under the flood stage where we rise  
8 to that elevation. Is overtopping about equal right now?

9 MR. BASSETT: No. The overtopping would go into  
10 the west levee, into the --

11 MEMBER BROWN: The west would overtop before the  
12 east side would?

13 MR. BASSETT: Yes. By approximately a foot or so.

14 SECRETARY DOHERTY: By about what?

15 MR. BASSETT: About a foot, a foot and a half.

16 MEMBER BROWN: So the flood stage, the west side  
17 is going to be overtopped first and obviously would be  
18 flooded.

19 The question begs then, as you rise up the  
20 additional foot, then you are going to share in some of  
21 that flooding that, as some might say, share the pain on  
22 it, to some increment.

23 MR. BASSETT: Well, right now, we show that we can  
24 generally contain the 200-year water surface assuming all  
25 the levees in the system are raised to their design

1 profiles and don't fail when they overtop.

2 MEMBER BROWN: Well, I'm thinking of status quo  
3 right now.

4 MR. BASSETT: Status quo are the floods that we  
5 have had, the '86 and the '97, would tend to show that  
6 that is a fairly conservative assumption. We don't  
7 normally get the levees overtopping by a foot or so or  
8 more will hold. And actually, you know, nothing is -- if  
9 I remember correctly, there's been very few overtopping  
10 events on any of the --

11 MEMBER BROWN: I'll ask the question a little bit  
12 different. What's the scenario, if there is one, where  
13 both sides would be flooded?

14 MR. BASSETT: Well, the scenario, I believe, in  
15 the way the system is operating right now is that the  
16 local district and the State and the Corps would initiate  
17 a flood fight on the west levee to prevent the  
18 overtopping, and then we would sit on our side. And as  
19 the water continued to rise, and if it came close to  
20 overtopping our levee, we would initiate a flood fight on  
21 our side. So as to whether or not they would actually  
22 overtop, you know, that is a matter of operations.

23 MEMBER BROWN: I'm trying to derive at -- and I'm  
24 wondering if you have -- you haven't been able to answer  
25 the question that I'm seeking here.

1 I'm trying to determine if you have analyzed what  
2 the increment -- obviously with the flood situation, the  
3 west side is going to get flooded out first.

4 MR. BASSETT: Yes.

5 MEMBER BROWN: All right.

6 With your protection on your east side, then, what  
7 increment, if any, would be added to the flooding problems  
8 on the west side?

9 MR. BASSETT: With our improvements?

10 MEMBER BROWN: Yes, with your improvements.

11 MR. BASSETT: There would be no increment.

12 MEMBER BROWN: Okay.

13 MR. BASSETT: They fail --

14 MEMBER BROWN: There's no overtop flooding,  
15 according to your engineering analysis, that would occur  
16 on the west side due to your construction on the east  
17 side?

18 MR. BASSETT: That's correct. Whether they are at  
19 their existing height, at their design height, the water  
20 surface doesn't come over our levees under those existing  
21 conditions. We did analyze that in our hydraulic analysis  
22 that's included in the appendix to the Draft EIR.

23 MEMBER BROWN: Have you tried to explain this to  
24 Mr. Schneider and Mr. Foley, whether they might agree to  
25 that or understand that?

1           MR. BASSETT: We have tried to explain to  
2 Mr. Schneider. We have not had much in the way of any  
3 discussions with Mr. Foley. He's -- I believe he's a  
4 resident up in RD 784 and did not make any comments on our  
5 EIR, so he hadn't contacted us.

6           MEMBER BROWN: Thank you.  
7           Thank you, Mr. Chairman.

8           PRESIDENT CARTER: Any other questions for  
9 Mr. Bassett?

10           Does the staff have any additional comments,  
11 rebuttal, to any of the testimony they have heard so far  
12 today?

13           SENIOR ENGINEER BUTLER: I only have one comment.

14           And there was a comment made about a cavalier  
15 remark. And I just wanted to be really clear that that  
16 remark was not intended to be cavalier at all, and I was  
17 merely referring to the fact that we were anticipating  
18 discussing what improvements might be necessary to other  
19 basins, and including west side Yolo basins, in the future  
20 years, leading up to the development of a new state plan  
21 of flood control.

22           So I'm assuming that will all occur in the next  
23 three to four years. And I take all those quite  
24 seriously, so I just want to make it clear that I have  
25 thought about this very clearly, for several months now,

1 with respect to SAFCA's program. And I'm in support of  
2 what they are proposing to do, and I recognize that there  
3 are trade-offs between pushing projects forward now  
4 without a comprehensive plan, versus waiting to do it all  
5 at once, if that is even possible.

6 So I just want to make that point clear.

7 Thank you.

8 PRESIDENT CARTER: Thank you.

9 Any questions for Mr. Butler?

10 MEMBER RIE: Yes, I have a question.

11 The gentleman who spoke earlier said that his  
12 house floods. I don't know what the frequency was. Did  
13 you want to address that, it floods now or it has in  
14 previous storms?

15 SENIOR ENGINEER BUTLER: Well, I don't have any  
16 specific details for his comments. So I think my comments  
17 would only be speculative. I worked for several years in  
18 the Flood Center and dealt directly with people calling in  
19 along Garden Highway during several flood events where  
20 there were varying degrees of flooding on their  
21 properties.

22 So I readily accept and have participated in  
23 assisting flood fighting in those areas in the past. So  
24 address him specifically today, I don't see where that  
25 would do any good.



1           MEMBER RIE: Are those houses currently in the  
2 floodplain, or are they in the flood channel?

3           SENIOR ENGINEER BUTLER: They are permitted homes  
4 within the existing floodplain. They are on the water  
5 side of the existing levee on Garden Highway.

6           And where they are with respect to the design, the  
7 '57 design profile, somebody who has a longer history with  
8 the Board would be better able to address that than  
9 myself.

10          MEMBER RIE: Okay.

11          PRESIDENT CARTER: Any other questions for  
12 Mr. Butler?

13          MEMBER SUAREZ: In our continuing conversation  
14 regarding when we're talking and addressing questions to  
15 the board, the fact that Member Rie has asked a question  
16 is significant enough for you to try to engage in a  
17 dialogue. I mean, a comment regarding you don't see what  
18 the point of it is or how useful it would be, it really is  
19 not your place. So in the future, when one of the members  
20 asks you a question, just try to address it.

21          SENIOR ENGINEER BUTLER: Okay.

22          PRESIDENT CARTER: Any other questions for  
23 Mr. Butler?

24          Very good.

25          MEMBER RIE: President Carter, would it be

1 appropriate to have SAFCA try to answer that question?

2 PRESIDENT CARTER: If you would like. I think  
3 that's permissible.

4 MR. BASSETT: We had done limited surveys of the  
5 existing houses on the waterside of the levee. They have  
6 been built over a number of different years, and they have  
7 each been built to whatever the current design or  
8 regulatory condition is in that area.

9 There was some that are fairly old before the --  
10 probably in place before the -- some of them may be before  
11 the '57 profile was set; some of them before the 1978 FEMA  
12 maps came out, so the elevations are all over the place.

13 We do have some data on certain homes where we've  
14 gone out and surveyed the first floors. There are a  
15 number of those houses that, because of any number of  
16 different reasons, have enclosed spaces that may be below  
17 the first floor elevation. Some people have storage areas  
18 below the house; some of them are basements; other, you  
19 know, rooms that get flooded.

20 So that goes on. Everybody knows that. That's  
21 why they are very vocal in wanting the Sacramento weir  
22 reoperated, to try and avoid some of the conditions where  
23 their houses get wet, by the river coming up.

24 The weir trigger is met and then the weirs open  
25 and the water falls again. So there are some improvements

1 there that are impacted at relatively low levels in the  
2 river that are below our hundred-year and 200-year design  
3 stages. Some of these houses are very low. We recognize  
4 that.

5 MEMBER RIE: And then I want to go back to the  
6 road. You're putting in the storm drain in the low area.  
7 Where does that drain to? Does that drain directly to the  
8 river?

9 MR. BASSETT: It will drain to the river. It will  
10 come in areas where we have a fairly wide berm that does  
11 not have residential development around it. It is  
12 intended to drain into a bit of a stilling basin and then  
13 discharge, by surface flow, into a river just like on the  
14 existing roadside runoff goes in.

15 In areas where we have to extend a drain through a  
16 residential area, we would be working with those  
17 homeowners. That would be piped, as much as possible,  
18 across the berm, in this case between two houses. And as  
19 we get close to the edge of the upper bank of the river,  
20 it would then go into another energy dissipator and  
21 stilling basin before it dropped in the river.

22 MEMBER RIE: Okay. Thank you.

23 PRESIDENT CARTER: Ms. Burroughs?

24 MEMBER BURROUGHS: I would like to know -- it  
25 says, "Conversion of important farm land to

1 nonagricultural uses." Approximately how much land is  
2 going to be removed from farmland?

3 MR. BASSETT: In the upper area, we are more  
4 certain of the footprint of our project than the lower  
5 portion, where we are less certain. So this is in the  
6 upper 4.3 miles. We've got about 300 to 400 acres that we  
7 are acquiring for the footprint of the levee.

8 But that also includes areas that are going to be  
9 converted to woodlands and some areas that are utilized  
10 for canals and other infrastructure improvements. Some of  
11 that is acquired because we had to offset the canals away  
12 from the levee so that the canals themselves don't  
13 generate an underseepage issue. There are -- so we have  
14 that component.

15 And then we're in the borrow activity. We are  
16 also taking borrow from within the basin to construct the  
17 levee improvements.

18 And there, we have in some areas converting what  
19 is existing rice lands to a managed marsh condition which  
20 is consistent with the Natomas Basin Habitat Conservation  
21 Plan. So that's additional area. There are some areas  
22 which have historically been in rice that will be  
23 converted to a grassland, which we've also considered to  
24 be an agricultural use. So there's about another 250 or  
25 so acres, I believe, in land that would go from existing

1 rice to a managed marsh condition.

2 MEMBER BURROUGHS: Thank you.

3 PRESIDENT CARTER: Any other questions from the  
4 Board?

5 VICE PRESIDENT HODGKINS: Mr. Bassett, are you  
6 free to talk to us at all about the nature of the  
7 potential settlement?

8 MR. BASSETT: I am free to disclose what the --  
9 was presented to the Board in open session following the  
10 closed session of the agreement yesterday. I don't happen  
11 to have that list in front of me. I can give you a  
12 general overview of what those are.

13 There was concerns raised about the power poles,  
14 either replacing where it is or having to move them over  
15 to the water side of the levee to comply with updated or,  
16 you know, new Corps criteria. One of the agreements is to  
17 work with the Corps and the State to try and keep those  
18 poles in the location they already are or to work with the  
19 particular landowner whose residence they serve and who  
20 would be affected by moving the power pole to the water  
21 side.

22 Similarly, with the drainage outfalls, as we've  
23 just reported, to work with the individual landowners  
24 whose easement, if we need to acquire an easement, or if  
25 we need to work with them to take a drainage line between

1 their house and the neighbor's house out to the river for  
2 the roadside drainage.

3 There was an agreement to have a construction  
4 ombudsman as a focal point for any construction complaints  
5 that the residents had.

6 There was an agreement to, as we have in the past,  
7 go out and if the homeowners request it, to survey  
8 existing residences preconstruction, to determine  
9 post-construction, whether there are any, you know, like  
10 cracks in the plaster or concrete or things of that sort,  
11 to be able to document the before and after condition.

12 There was an agreement to keep the tall trucks  
13 along the Sacramento River off the Garden Highway on the  
14 landside, driving within the levee improvements or the  
15 maintenance road at the toe.

16 Those are the only ones I can remember.

17 VICE PRESIDENT HODGKINS: Thank you.

18 PRESIDENT CARTER: Anything further?

19 Thank you very much.

20 MR. BASSETT: Thank you.

21 PRESIDENT CARTER: At this point we are going to  
22 close the public testimony of this hearing. And at this  
23 point, the Board is free to deliberate and discuss, modify  
24 the staff recommendation. So what's the Board's pleasure  
25 here?

1 Ms. Burroughs?

2 MEMBER BURROUGHS: I believe that it's very  
3 important for us at this point in providing public safety  
4 that we not continue piecemealing the approach of adding  
5 public safety.

6 I don't think it's right to have one side of the  
7 levee raised and not the other. We need to have plans  
8 that are systemwide, holistic approaches that are fair to  
9 both sides.

10 I would be pleased to push the permit forward  
11 without the part of raising the levee.

12 PRESIDENT CARTER: Okay. Thank you.

13 Any other comments? Motions?

14 MEMBER BROWN: Mr. Chairman?

15 PRESIDENT CARTER: Mr. Brown.

16 MEMBER BROWN: I was concerned on protecting one  
17 side of the levee without protecting the other. But I --  
18 I was convinced by the evidence that the raising of one  
19 side is not going to have an incremental detrimental  
20 affect to the west side. I have seen no proof or even  
21 statement to that effect that it would, other than kind of  
22 a policy statement.

23 The engineering that was submitted by the  
24 proponents seem to have a preponderance of the evidence  
25 that -- on flood stage, that the west side is going to

1 flood regardless, and that the raising of the berm on the  
2 east side is going to have little or, according to the  
3 proponent, no effect. If there's evidence contrary to  
4 that, I would like to hear it, other than just statement.  
5 If that's the case, then I think we ought to proceed.

6 And while we would like to construct all of the  
7 facilities at once and try to keep everything on a fair  
8 and even keel, it's just impractical to do that. So when  
9 we have the opportunity to advance a project and move it  
10 forward, I think it deserves our very best consideration.

11 But back up a step. If there's evidence that by  
12 raising the east side it is going to have an incremental  
13 detrimental effect to the west side, I would like to hear  
14 the evidence and not just statements.

15 PRESIDENT CARTER: Thank you. Mr. Hodgkins?

16 VICE PRESIDENT HODGKINS: Yeah. I understand the  
17 frustration of the piecemealing.

18 But, you know, I think someone was talking about  
19 history. Okay? It took 50 years, actually 60, before all  
20 the property owners in the basin got to the point where  
21 they went to Governor Hiram Johnson and said, "We need the  
22 Reclamation Board." Okay? That was a hundred years ago.

23 Okay? So there was a 75-year argument over  
24 whether you needed any central control, and it was finally  
25 brought to a close by a flood. And that led to the



1 formation of the board. It's a hundred years later.

2 And it took 50 years to construct a project that  
3 was initially conceived in 1911.

4 Things change. And part of what's changed here in  
5 the valley is we now have areas where the potential  
6 damages behind these levees are huge, both in terms of  
7 money and in terms of risk to human life. And I feel that  
8 it's a public policy mandate.

9 I mean, no other public policy makes sense other  
10 than as we can reduce the risk -- and remember, risk is  
11 defined as the probability of flooding and the  
12 consequences of the flooding. So it is not just the  
13 probability of flooding. It is the consequences, the  
14 damages, the risks to human life.

15 And I think we have to go forward with this  
16 project. I would like to add a condition to the permit  
17 that fundamentally says, SAFCA is required to participate  
18 in further modifications to the system as may be required  
19 within SAFCA's jurisdiction by the state -- by the Central  
20 Valley Flood Protection Plan -- and somebody make sure  
21 that's what it's called in the legislation. But I think  
22 that's it. And with that, you know, we are binding SAFCA,  
23 as best we can, to live with that plan, whatever it turns  
24 out to be.

25 And I think that's what we need to do here.

1 MEMBER BURROUGHS: Mr. President?

2 PRESIDENT CARTER: Ms. Burroughs?

3 MEMBER BURROUGHS: I pose the question, if two  
4 sides of the levee are the same height -- I pose the  
5 question. This is a question just for discussion.

6 If one side is raised 3 feet higher, would you  
7 still vote to have it 3 feet higher on one side and not on  
8 the other?

9 MEMBER BROWN: Mr. Hodgkins also presents a strong  
10 argument on behalf of the consequence. I think that that  
11 would probably persuade me, but it would be a more  
12 difficult decision to make. But I think I would still be  
13 persuaded in this case because of the consequence of one  
14 side being tremendous.

15 MEMBER BURROUGHS: If both sides had urban  
16 population, would you allow one side to have 3 feet  
17 higher?

18 MEMBER BROWN: It keeps getting harder.

19 MEMBER BURROUGHS: Okay.

20 I would like to ask legal counsel to advise us in  
21 this particular issue about the -- I don't have any  
22 problem with the over improvements except the issue of a  
23 raised portion of it.

24 And I would like legal counsel to advise us on  
25 that, on that technicality, without the raising.

1           PRESIDENT CARTER: So specifically what is your  
2 question for legal counsel?

3           MEMBER BURROUGHS: As it's been stated earlier  
4 about the history of the Reclamation Board in protecting  
5 the whole levee system and the levee on one side be raised  
6 3 feet higher than the other.

7           PRESIDENT CARTER: Okay.

8           LEGAL COUNSEL CAHILL: I think that's more of a  
9 policy question than a legal question. I think the Board  
10 fulfills its responsibilities in the way it determines to  
11 be best.

12          VICE PRESIDENT HODGKINS: And if I might ask you,  
13 you are familiar with the legislation where the  
14 Legislature has said, and remember, the Legislature  
15 creates this Board back in 1911, I think. The Legislature  
16 has said, urban areas will have -- urban areas with  
17 populations in excess of 10,000 people will have 200-year  
18 flood protection. Areas with populations less than 10,000  
19 will have 100-year minimum, in both cases minimum flood  
20 protection.

21          And so they have established a standard as we go  
22 forward that means different areas will have different  
23 levels of protection.

24          LEGAL COUNSEL CAHILL: I just thought of something  
25 else too. In your resolution, you will find a quotation

1 from a statute, that was passed just this past year, that  
2 specifically addresses the SAFCA project, where the  
3 Legislature determined it would not have hydraulic impacts  
4 so that I believe no additional mitigation would be  
5 required.

6 It's cited in the resolution.

7 MEMBER SUAREZ: Mr. President? May I?

8 PRESIDENT CARTER: Yes.

9 MEMBER SUAREZ: Ms. Cahill, perhaps we can address  
10 Ms. Burroughs' concern by asking you a purely legal  
11 question, which is, what is the standard of review a court  
12 would apply if a judge were looking at the decision we're  
13 about to make?

14 LEGAL COUNSEL CAHILL: I'm assuming it would be  
15 the substantial evidence standard of review?

16 MEMBER SUAREZ: On some level of reasonableness.

17 LEGAL COUNSEL CAHILL: Substantial evidence is  
18 some evidence on which a reasonable person could draw the  
19 conclusion that the Board drew. And it's a deferential  
20 standard; it tends to give deference to the agency  
21 decision.

22 MEMBER SUAREZ: Thank you.

23 MEMBER BROWN: Mr. Chairman?

24 PRESIDENT CARTER: Mr. Brown?

25 MEMBER BROWN: The major evidence to me presented

1 in this case is that -- and there's a difference between  
2 evidence and policy.

3 Evidence is something that in my mind is  
4 substantiated by qualified experts in the field. And the  
5 evidence presented in this case is that the west side is  
6 lower than the east side as it is today. And the  
7 additional evidence that was presented by experts in the  
8 field is that at flood stage, whatever that may be, the  
9 west side is going to be flooded regardless.

10 And I tried to ask the question then with  
11 additional flooding. Is there an increment of damage that  
12 would occur to the west side by the additional flooding in  
13 elevation of flooding?

14 And the answer by the proponents, who presumably  
15 have done the engineering on this, have said that there is  
16 none.

17 Then I asked, if the other side has evidence by  
18 experts in the field that would claim so otherwise, and  
19 there is none.

20 That leads me to the conclusion then that the  
21 raising of the dikes or levees on the east side is not  
22 going to cause incremental damage to the west side.

23 Again, I say, if there's evidence contrary to  
24 that, then this Board should hear it. But I have seen nor  
25 heard none.

1           It also begs the question that Mr. Hodgkins put  
2 forward is, is the amount of damage that can be incurred  
3 from one side or the other. And those are strong  
4 arguments that are hard for me to ignore. And if  
5 Mr. Hodgkins was to put his very well-stated statement  
6 into a motion requiring the additional consideration,  
7 which I think is very appropriate, I would be willing to  
8 second that motion.

9           SECRETARY DOHERTY: Would you repeat it, please.

10          VICE PRESIDENT HODGKINS: I think the motion would  
11 be to approve the resolution but with the addition here  
12 that a condition be added to this permit that, in effect,  
13 compels SAFCA, requires SAFCA, to participate in any  
14 further modifications to the project that may be required  
15 by the adoption of the Central Valley Flood Protection  
16 Plan in a manner that's consistent with the way that other  
17 jurisdictions are required by that plan to participate.

18          Now, I'm sure the attorneys can do a better job  
19 with that than I can. But I think I got the message  
20 across.

21          And with that, I would be -- I so move.

22          PRESIDENT CARTER: We have a motion before us.

23          Is there a second?

24          MEMBER BROWN: I will second the motion,  
25 Mr. Chair.

1 PRESIDENT CARTER: We have a motion and a second.

2 Any further discussion?

3 MEMBER RIE: Yes.

4 PRESIDENT CARTER: Ms. Rie?

5 MEMBER RIE: In Resolution 2008-04, the second  
6 paragraph, the whereas, "SAFCA as lead agency prepared an  
7 environmental impact report." That needs to be corrected.  
8 And it should say, "Final Environmental Impact Report on  
9 the Natomas Levee Improvement Program land side  
10 improvements project, responses to comments, and revisions  
11 to the Draft EIR dated November 2007."

12 SECRETARY DOHERTY: Is that the cover page of 10A?

13 MEMBER RIE: Pardon me?

14 SECRETARY DOHERTY: Is that the cover page of 10A?  
15 Where are you?

16 PRESIDENT CARTER: It's the title page of the EIR.

17 VICE PRESIDENT HODGKINS: Of the Final EIR.

18 MEMBER RIE: The second whereas in the resolution  
19 simply states that SAFCA prepared an EIR. And originally,  
20 they prepared an EIR, but subsequently, they prepared a  
21 Final EIR, which included responses to comments and  
22 revisions to the draft. So to be technically correct, you  
23 need to have "Final EIR."

24 LEGAL COUNSEL CAHILL: Would you suggest that when  
25 we also refer to the draft that we say, "Prepared a draft

1 on such and such a date" and the final with the correct  
2 title on it and the date?

3 MEMBER RIE: I think the Final EIR includes the  
4 draft.

5 LEGAL COUNSEL CAHILL: Okay. It's a stand-alone  
6 final.

7 MEMBER RIE: Okay. Yeah.

8 I will defer to the staff to figure out exactly  
9 what we need. But that second paragraph in the final  
10 resolution will need to be modified to refer to the  
11 correct document.

12 PRESIDENT CARTER: Okay. So we have a motion and  
13 a second to approve the resolution.

14 Mr. Hodgkins, do you accept Ms. Rie's amendment?

15 VICE PRESIDENT HODGKINS: I do.

16 PRESIDENT CARTER: Okay. And the seconder?

17 MEMBER BROWN: Yes, sir.

18 PRESIDENT CARTER: Okay.

19 Any other discussion? Does everybody understand  
20 the motion?

21 Mr. Punia, would you call the roll.

22 MR. BASSETT: If I may, President Carter.

23 I think you earlier indicated that any changes to  
24 the proposed --

25 PRESIDENT CARTER: I did. Please proceed,



1 briefly.

2 MR. BASSETT: We are in agreement with  
3 Mr. Hodgkins' additional condition with the -- I think the  
4 viewpoint is that the improvements that you are  
5 authorizing today, should you adopt the resolution and the  
6 motion, would be that the -- these improvements do not  
7 give SAFCA a leg up or a higher moral ground to prevent  
8 that plan of flood control moving forward.

9 And if I think as Mr. Hodgkins also indicated is  
10 that the actual language that is included in the condition  
11 be worked out between both your counsel and our counsel,  
12 if I'm understanding that, then we are in agreement with  
13 the condition.

14 VICE PRESIDENT HODGKINS: That is the nature of my  
15 condition. You don't get to say, you got to fix ours  
16 because we already have it. You will fix yours to the  
17 same extent everybody else fixes theirs.

18 MR. BASSETT: Yes. We will participate in that  
19 program.

20 MEMBER BURROUGHS: Mr. President, before the vote,  
21 I do have another question.

22 PRESIDENT CARTER: Ms. Burroughs?

23 MEMBER BURROUGHS: Were you finished?

24 MR. BASSETT: Yes.

25 MEMBER BURROUGHS: Thank you.

1           Before we take the vote, I do have some more  
2   comments to make.

3           Previously, this Board has twice voted down  
4   raising levees in other projects. And I really want to  
5   stress again that I believe that the policy of having to  
6   raise a levee on one side and not the other, I hope that  
7   we can come to some kind of resolution as we move forward  
8   as other projects continue.

9           And I just wanted to make sure that this Board  
10   remembered that twice before, we have voted not to raise a  
11   levee.

12          Thank you.

13          MEMBER RIE: Could you refresh our memories which  
14   projects were those?

15          MEMBER BURROUGHS: I will refer that to staff to  
16   answer. They are more familiar with numbers than I am,  
17   but I know that we've done that twice.

18          SUPERVISING ENGINEER FUA: That would be Three  
19   Rivers Levee Improvement Authority.

20          PRESIDENT CARTER: Mr. Punia?

21          EXECUTIVE OFFICER PUNIA: There is a slight  
22   distinction. I want to clarify that in this case we are  
23   able to demonstrate that there's no hydraulic impact on  
24   the rest of the project.

25          PRESIDENT CARTER: Okay. Mr. Reinhardt, are you

1 speaking on behalf of the applicant?

2 MR. REINHARDT: Just want to make one correction  
3 on Three Rivers.

4 PRESIDENT CARTER: If you are not speaking as part  
5 of the applicant, you are speaking out of turn.

6 Any other deliberations?

7 MEMBER RIE: I remember, we have had levee raising  
8 before our Board, but I don't believe we ever came to a  
9 conclusion on the Three Rivers project, not that we need  
10 to talk about it. We can move on.

11 PRESIDENT CARTER: I think that's a topic for  
12 another discussion.

13 I think just one comment. And I have remained  
14 silent. But with regard to the improvements to the  
15 system, I think we all need to keep an eye towards the  
16 entire system continuously improving over time. And the  
17 only way we can accomplish that is doing that  
18 incrementally.

19 And so as Mr. Brown aptly pointed out, it's not  
20 feasible, realistic, practical, to try and raise levees  
21 all at once and achieve parity simultaneously on flood  
22 protection. We have to do this incrementally, and it's  
23 the only practical way to do it.

24 So I think the Board needs to be realistic about  
25 that perspective.

1           So with that, Mr. Punia, would you call the roll.

2           EXECUTIVE OFFICER PUNIA:   Board Member Emma

3   Suarez?

4           MEMBER SUAREZ:   Aye.

5           EXECUTIVE OFFICER PUNIA:   Board Vice President

6   Butch Hodgkins?

7           VICE PRESIDENT HODGKINS:   Aye.

8           EXECUTIVE OFFICER PUNIA:   Board Member Teri Rie?

9           MEMBER RIE:   Aye.

10          EXECUTIVE OFFICER PUNIA:   Board Member John Brown?

11          MEMBER BROWN:   Aye.

12          EXECUTIVE OFFICER PUNIA:   Board Member Rose Marie

13   Burroughs?

14          MEMBER BURROUGHS:   No.

15          EXECUTIVE OFFICER PUNIA:   Board Member Lady Bug?

16          SECRETARY DOHERTY:   Aye.

17          EXECUTIVE OFFICER PUNIA:   Board President Ben

18   Carter.

19          PRESIDENT CARTER:   Aye.

20          So the motion carries, six to one.

21          Thank you very much.

22          Let's take a brief recess, ten minutes, and then

23   we will continue on with our next hearing.

24          I encourage everybody who's going to testify in

25   that hearing to try and be concise in their remarks.

1 Thank you.

2 (Thereupon a break was taken in  
3 proceedings.)

4 PRESIDENT CARTER: Ladies and gentlemen, if I  
5 could ask you to take your seats we will go ahead and  
6 continue.

7 At this time, we are on Item 10B, which is a  
8 public hearing on Application No. 18227 BD Three Rivers  
9 Levee Improvement Authority, Phase 4 Feather River Levee  
10 Repair Project, Segment 2, Feather River Setback Levee,  
11 Yuba County.

12 One of these days, I will be able to do that fast.

13 We are here to hold a hearing and consider  
14 approval of modified draft Permit No. 18227 BD to  
15 implement phased construction of a 5.7-mile-long backup  
16 levee approximately one-half mile to the east of the  
17 existing left bank levee of the Feather River. The  
18 project is located south of Marysville and west of Highway  
19 20 [sic] in Yuba County. Sections as noted on the agenda.

20 At this time, we've just been through one hearing.  
21 The process is the same for this one. We will have a  
22 Board staff presentation followed by public testimony  
23 followed by rebuttal. At that point, testimony will be  
24 closed and the Board will deliberate and hopefully come to  
25 some decision.

1           So with that, I am going to open this public  
2   hearing, formally, and ask the Board staff, Mr. Fua, to  
3   begin his presentation with alacrity.

4           SUPERVISING ENGINEER FUA: Thank you, Mr.  
5   President, Members of the Board.

6           For the record, Dan Fua, staff engineer for the  
7   Board.

8           At the December 21, 2007, meeting, the Board  
9   delegated authority to the general manager to issue a  
10   final permit for the Feather River Setback Levee, Segment  
11   No. 2, for Three River Levee Improvement Authority.

12          In that meeting, you also instructed staff that  
13   should any policy issues arise, that you bring the permit  
14   back to the Board at a public meeting.

15          Well, in early February, the staff of the  
16   Department of Water Resources, the Corps of Engineers, and  
17   Board staff have more or less resolved the major issues  
18   regarding the design of the setback levee. So at that  
19   point, the Board staff had drafted a permit for the  
20   setback levee, posted it to the Web site.

21          But on February 21st, Three Rivers met with us and  
22   informed us that the Corps of Engineers made a  
23   determination that a full Environmental Impact Statement  
24   is required for this project.

25          This means that Section 408 approval and Section

1 404 permit will not be granted by the U.S. Army Corps of  
2 Engineers until the Environmental Impact Statement is  
3 finalized and a record of decision is made.

4 So Three Rivers had requested us to revise the  
5 drafted permit to allow them to phase the construction, to  
6 allow them to construct a portion of the levee that they  
7 believe will not require Section 408 approval or Section  
8 404 permit.

9 So that's the reason why staff is bringing back  
10 the permit to you before today so you can consider  
11 approval of a modified encroachment Permit No. 18227 BD to  
12 implement phased construction of 5.7 miles of new levee  
13 along the east bank levee of the Feather River from Star  
14 Bend, northward.

15 I'm going to breeze through the permit because you  
16 already know this, the next two slides. Actually, I am  
17 designing this presentation for the benefit of the two ex  
18 officio members. But since they are not here, I'm going  
19 to skip it.

20 So anyway, as a way of background, I would like to  
21 refresh your memory of the chronology of the events of  
22 this permit.

23 First, in October 2007, you approved sending the  
24 408 letter to the Corps; and then in December 2007, you  
25 delegated the issuance of the final permit to the general

1 manager, pending resolution of the technical issues  
2 surrounding the design of the levee. And then in the same  
3 meeting, it also specified that the permit should have a  
4 condition prohibiting construction until 408 approval is  
5 received. And then on February 15, the Corps of Engineers  
6 made the determination that an EIS is required for this  
7 project.

8           So to, again, review what I said in my  
9 introduction, the major technical issues were resolved --  
10 the new levee alignment was resolved; the levee tie-in  
11 design; the cutoff wall design; the pumping plant gravity  
12 drain was removed, as DWR and Board staff and the Corps  
13 have requested. And they submitted the plans and  
14 specifications that are more or less, I would say, 95  
15 percent complete.

16           As a result of the review by DWR, 95, staff, Corps  
17 staff, and the Board, we have raised additional analysis  
18 and things that are needed before we can consider the  
19 design complete, and that is additional underseepage  
20 analysis at the pumping plant No. 3 site, design section  
21 No. 10, and design section No. 14.

22           The Corps also requested for additional slope  
23 stability analysis using water at the top of the levee  
24 conditions.

25           DWR requested a settlement analysis in pumping



1 plant No. 3 location.

2 And depending on the results, appropriate  
3 mitigation measures will be incorporated in the design.  
4 Also, we found some minor missing information in the  
5 drawings and some clarifications in the contract  
6 specifications.

7 There's missing information or additional  
8 analysis -- they are not minor, but they should not stand  
9 in the way of issuing the permit.

10 So here's Three River's proposal, that they be  
11 allowed to construct a portion of the levee that requires  
12 a federal approval, and then they will complete the  
13 remaining portion of the levee after they receive a  
14 Section 404 and Section 408 approvals.

15 Here's the schematic diagram of the project. The  
16 green is part A. This is what they are proposing to  
17 construct prior to the completion of the EIS, prior to the  
18 approval of the Section 408, and prior to the issuance of  
19 a Section 404 permit.

20 So this is approximately 4.6 miles out of the  
21 5.7 miles that comprises the entire setback levee.

22 Part B would be the tie-ins. And the areas where  
23 there are jurisdictional waters in the state, like the  
24 Plumas Lake canal crossing, the unnamed ditch crossing,  
25 and the levee near the resource site, right over here, and

1 of course in north tie-in.

2 Staff has identified at least two issues that we  
3 believe the Board should consider before, you know, acting  
4 on the request by Three Rivers to modify the permit to  
5 allow phased construction. The first issue is the Section  
6 104 crediting.

7 The law that governs the -- the federal law that  
8 governs the crediting does not allow if you construct the  
9 project before they approve it. We just received  
10 information from the Corps that they are not going to  
11 approve Section 104 crediting until after Section 408 is  
12 approved. You have a letter in front of you that states  
13 that. And that's on page 2 of the letter.

14 The last phrase of the section paragraph, and I  
15 quote, "408 approval must be secured first and submitted  
16 along with the 104 credit request prior to any credit  
17 eligibility assessment."

18 The second issue is proceeding with construction  
19 without federal approval. There is an unknown risk  
20 that what may be constructed may not be what the Corps  
21 wants.

22 So they have not approved the design, although the  
23 district has reviewed extensively the design of the  
24 setback levee. But we have division staff and we have  
25 headquarters who have not done a review of this project.

1 In addition, the environmental requirements that may --  
2 that they may find when they do their EIS, that that could  
3 also be a problem.

4 In other words, if they go ahead and proceed with  
5 the construction of that, this, what I call, interior  
6 levee, when the Corps gives them the approval, there may  
7 be some modification of what the Corps would approve.

8 Ms. Megan Nagey was here earlier but she had to  
9 leave. She was going to make a statement on behalf of the  
10 Corps on their concerns about this plan to go ahead and  
11 proceed with construction without federal approvals. And  
12 if I may, I would like to read into the record her  
13 comments.

14 PRESIDENT CARTER: Please.

15 SUPERVISING ENGINEER FUA: "First, the Secretary  
16 of the Army determined 104 credit cannot be granted.  
17 Second, we have no jurisdiction if building on our plans  
18 are not touching the federal project. Moving forward is  
19 at their own risk, both financial and environmental. And  
20 the Sacramento district will send a letter explaining this  
21 to TRLIA and the state if they move forward. There are no  
22 guarantees that permits will be issued or issued as  
23 constructed. Will it be recognized as part of the federal  
24 project until after the 408 approved. TRLIA is not  
25 covered under the biological opinion until 404 or 408 is

1 issued."

2 She also informed me, it's here also in writing,  
3 that the 408 approval is scheduled -- the 408 is scheduled  
4 for a decision by October 8th and that the final EIS  
5 review period is scheduled to be completed at the end of  
6 August.

7 And it says here, she also cautioned that their  
8 engineer had said that if TRLIA should go ahead and move  
9 and construct this interior levee, that they not go  
10 beyond, I believe, station 280, because if they do, they  
11 would create a seepage block and would create more  
12 problems.

13 On the other side, if you do not approve the  
14 permit, south Yuba County could enter another flood season  
15 with the same levee. And also, just like the -- what the  
16 Corps said, the Corps said they have no jurisdiction in  
17 this one, and maybe the Board probably will have any  
18 jurisdiction. If TRLIA chooses to proceed with the  
19 construction, then their construction will be without  
20 Board oversight.

21 I don't really have any recommendations. I am  
22 just laying out to you the issues you should consider. We  
23 did prepare a draft permit for your consideration. And I  
24 would like to point out that condition No. 13 was revised,  
25 and you have a copy of the revised condition.

1           And essentially, it's about the -- when the  
2   cooperation agreement should be executed. And instead of  
3   saying before part A or part B, we agreed to saying that,  
4   you know, before part B is constructed, part B is the  
5   portion where they will construct after federal approvals  
6   are granted.

7           That concludes my presentation.

8           PRESIDENT CARTER: Thank you, Mr. Fua.

9           Do we have any questions for Mr. Fua?

10          SECRETARY DOHERTY: I do because I want to make  
11   sure I understand.

12          So if they proceed, and let's say they build their  
13   levees here, and then it was supposed to be one whole  
14   piece, but the permit has not arrived, so they get no  
15   credit for no money to help build these sections; is that  
16   correct?

17          SUPERVISING ENGINEER FUA: The credit that is at  
18   stake, that the state is contributing is 130 --  
19   \$125 million. That's the issue that I think the Board  
20   should be -- the Board should be more concerned.

21          Whether or not they can -- they'll have money to  
22   build the remaining portion of the project, I don't think  
23   that is an issue. I think they still have the money  
24   because they have the \$130.5 million the state is  
25   contributing for the entire project.

1           SECRETARY DOHERTY: And so if we had no oversight  
2   conceivably -- I mean, let's just think of the worst  
3   scenario. They could use anything they wanted in these  
4   levees here, and then when it came time to finish, then  
5   this levee wouldn't meet the standard; right? Is that  
6   possible?

7           SUPERVISING ENGINEER FUA: Probably not, because  
8   even though, you know, if we proceed and we don't have any  
9   oversight, we have reviewed their design, you know. At  
10  this point, we have told them that they accepted both  
11  ours, DWR's, and the Corps' comments and the design.  
12  We're close to that.

13           So my answer would be no. But my concern is that  
14  if they go ahead and construct it, then the Corps  
15  headquarters for the division would say, "Wait a minute.  
16  You need to do it this way." So then that would be a  
17  problem.

18           SECRETARY DOHERTY: Okay.

19           MEMBER RIE: Is there anybody here from DWR?

20           SUPERVISING ENGINEER FUA: I think so, yeah.

21           MEMBER RIE: Could you come up and address some of  
22  these issues?

23           PRESIDENT CARTER: Actually, Mr. Qualley will  
24  address some of these issues when he speaks as part of the  
25  public testimony.

1           MEMBER RIE:   Okay.

2           PRESIDENT CARTER:   Any questions for Mr. Fua of  
3   the staff report?

4           MEMBER SUAREZ:   I do.   Is this the first time  
5   we've allowed phased construction permitting, where we  
6   permitted a portion waiting for something else to happen  
7   somewhere else and then -- on a project?

8           SUPERVISING ENGINEER FUA:   We have.   I think we  
9   have done some phased construction, allowed phased  
10   construction.   The difference is the federal approvals.   I  
11   think this is the first one that if you do issue --  
12   approve the improvement, this may be the first time that  
13   you issue a permit without federal approvals.   We allow  
14   construction.   We've issued the permit before federal  
15   approvals, but allow construction before federal  
16   approvals.

17          PRESIDENT CARTER:   Okay.

18          Ms. Suarez?

19          MEMBER SUAREZ:   And just another question is, you  
20   say you don't have a particular staff recommendation.   You  
21   are just kind of presenting the pros and cons.   I was  
22   wondering if Mr. Punia had a general manager's  
23   recommendation.   I don't know what to call it.

24          EXECUTIVE OFFICER PUNIA:   I think this is a good  
25   project.   We need to do everything in our power to move

1 this project forward. And there are issues of the Section  
2 104 credit. I think George Qualley will elaborate more on  
3 the state's position, Department of Water Resource's  
4 position, on that because they are providing a major  
5 portion of the funding of this project.

6 Another positive side on this project is we have  
7 already required a substantial amount of credit in this  
8 basin already, so that may be sufficient for a future  
9 federal project to cost share 50/50 the project in that  
10 reach.

11 But the state is also trying to change the federal  
12 legislation that we can take that federal credit in other  
13 basins. So if that legislation passes, then I think this  
14 credit is worth quite a lot to the State of California,  
15 because we will be able to utilize that federal credit in  
16 other basins to develop into a flood control project.

17 MEMBER SUAREZ: Just so I make sure, you don't --  
18 the concern that's raised that's the first time, as far as  
19 at least Mr. Fua, I believe, that we would be allowing a  
20 phased permitting that actually authorizes construction.  
21 That is not a concern?

22 EXECUTIVE OFFICER PUNIA: No. I think it's a good  
23 project. And we are engaged with the TRLIA, and U.S. Army  
24 Corps of Engineers is also engaged in reviewing their  
25 initial designs. So I think it's -- we need to move



1 forward, but realizing the consequences that the Feds may  
2 not give us a credit on Section 104.

3 PRESIDENT CARTER: Mr. Hodgkins?

4 VICE PRESIDENT HODGKINS: I guess I would ask if  
5 either of you would care to comment on the possibility of  
6 the Corps not approving the 408, and if we have the  
7 strategy, should that happen, to make use of this  
8 particular piece of levee.

9 I guess I'm -- let me -- answer my question.

10 MEMBER RIE: Would we just have two levees there  
11 then?

12 VICE PRESIDENT HODGKINS: The second one wouldn't  
13 be a levee. It would be a big pile of very carefully  
14 engineered dirt.

15 EXECUTIVE OFFICER PUNIA: But I cannot imagine  
16 that this, the new levee, is on a better foundation. That  
17 I cannot foresee any reason why Corps will not consider  
18 that as part of the federal flood control project down the  
19 line when we know that existing levee, there is  
20 underseepage issues which the State and the Feds are not  
21 able to resolve for so many years, that this is a better  
22 levee on a better foundation, that what will stop and not  
23 bringing this as part of the federal flood control  
24 project.

25 PRESIDENT CARTER: Perhaps some of this discussion

1 might better take place a little later on in the hearing.

2 VICE PRESIDENT HODGKINS: That might be.

3 PRESIDENT CARTER: Let's maybe establish some  
4 facts rather than supposition at this point.

5 Ms. Burroughs?

6 MEMBER BURROUGHS: Thank you.

7 In regards to the tie-ins, have all the drawings  
8 been turned in and at what percent finalized are they?

9 SUPERVISING ENGINEER FUA: Yes. The tie-ins, the  
10 revised tie-ins, have been submitted, approved, by DWR and  
11 the Corps and Board staff. So in essence, that is  
12 essentially complete.

13 PRESIDENT CARTER: Okay. Any other questions for  
14 Mr. Fua?

15 If I can just maybe summarize the lay of the land,  
16 you say that according to Ms. Nagey's written submittal,  
17 the EIS is scheduled for review on August -- by the end of  
18 August, August 31.

19 SUPERVISING ENGINEER FUA: That is correct.

20 PRESIDENT CARTER: The 408 approval is scheduled  
21 for the 8th of October.

22 SUPERVISING ENGINEER FUA: October 2008.

23 PRESIDENT CARTER: October 2008, okay.

24 And so she -- and so John Paul Woodley has written  
25 a letter saying that a 408 -- 104 credit is not available

1 until 408 approval is granted. Until 408 approval is  
2 granted, the project is not covered under the biological  
3 opinion.

4 SUPERVISING ENGINEER FUA: Until -- yes, until 408  
5 or 404 permit.

6 PRESIDENT CARTER: Okay.

7 SUPERVISING ENGINEER FUA: So that means that they  
8 could be liable for any endangered species that they could  
9 take when they construct that levee.

10 PRESIDENT CARTER: Okay. And construction would  
11 take place without Board oversight --

12 SUPERVISING ENGINEER FUA: If --

13 PRESIDENT CARTER: -- if they were to go ahead and  
14 proceed starting tomorrow.

15 SUPERVISING ENGINEER FUA: Correct.

16 PRESIDENT CARTER: We granted the permit. And if  
17 they proceeded to construct, it would be without Board  
18 oversight.

19 SUPERVISING ENGINEER FUA: If we don't approve the  
20 permit. If you approve the permit, then we will have  
21 oversight of the levee, what we call the interior levee.

22 PRESIDENT CARTER: If we don't grant the permit,  
23 they still go ahead and start building the levee.

24 SUPERVISING ENGINEER FUA: That's my opinion. And  
25 I would like to ask Ginny if that's correct, a correct

1 opinion.

2 MEMBER RIE: Didn't we already approve the permit?

3 SUPERVISING ENGINEER FUA: You delegated the  
4 authority to issue the permit to the Board, but you also  
5 instructed us to bring it back if some policy issues  
6 arise. So that's why we're bringing this back, because  
7 this is different.

8 The permit that you probably approved last  
9 December was for the entire project and you also  
10 conditioned -- there's also a condition there that they  
11 will not start construction before 408 approval. Now,  
12 this one is phased, and they want to proceed with  
13 construction of a portion of the levee without Section 408  
14 approval. So this is quite -- this is a modified permit.

15 MEMBER RIE: Oh. So you were asking us to approve  
16 the modified permit?

17 SUPERVISING ENGINEER FUA: That's correct.

18 MEMBER RIE: Oh, okay.

19 SECRETARY DOHERTY: And is the reason this was  
20 held up is because the Environmental Impact Statement  
21 wasn't studied, wasn't complete for this particular  
22 section?

23 SUPERVISING ENGINEER FUA: The EIS is for the full  
24 project, and the Corps just made that determination that  
25 it is necessary on February 15. So we didn't know this in

1 December. We thought an environmental assessment would  
2 have been satisfactory.

3 PRESIDENT CARTER: So the applicant completed an  
4 environmental assessment, submitted that the Corps  
5 determined that it was not sufficient, and would require  
6 and is asking for an EIS.

7 SUPERVISING ENGINEER FUA: That's correct.

8 PRESIDENT CARTER: All right. Any other questions  
9 for Mr. Fua?

10 Thank you, Dan.

11 At this point, I would like to invite the  
12 applicant up to testify.

13 MR. SHAPIRO: Good afternoon, President Carter and  
14 members of the Board.

15 Scott Shapiro, general counsel, Three Rivers Levee  
16 Improvement Authority.

17 I stand before you yet again requesting your work,  
18 helping us to finish this levee improvement project to get  
19 Yuba County to 200-year protection. We've had tremendous  
20 cooperation and success working with this board in the  
21 past. And my hope is that it will continue through this  
22 last -- what we believe this last significant issue.

23 The issue before you today is really one of  
24 balancing. And it's not all that different from some of  
25 the balancing we talked about in the last hearing. Here,

1 the balance on the one hand is getting flood protection  
2 improvements in as quickly as possible.

3 The balance on the other hand is not a  
4 piecemealing discussion as existed in the last hearing.  
5 But rather, the balance on the other side is the risk of  
6 losing Section 104 credit and the risk, really, that's a  
7 financial risk, that the Corps might say, the work we're  
8 doing isn't quite enough and we need to do something more  
9 or something different.

10 I would argue the risk is primarily financial on  
11 one side, i.e. it costs more if we proceed and have to  
12 change it, versus our risk of financial and life on the  
13 other side, i.e. will lives potentially be saved if  
14 there's a levee failure in the interim.

15 I think Dan Fua really stated it well when he  
16 talked about what some of the downside risks are. Indeed,  
17 Three Rivers concluded that it could probably go in and  
18 construct everything before you today as part A to  
19 construct, without Board approval. We didn't try to do  
20 that.

21 Some of you might say, the old Three Rivers might  
22 have tried to do that, in a day when there was less  
23 cooperation and less communication. But that day is gone,  
24 and now what we have is the kind of cooperation and  
25 communication that Jay Punia talked about. We submit

1 plans, we get comments, we revise. We continue to work  
2 with the Board, with the staff, with DWR, with the Corps.  
3 And that cooperation and coordination is continuing.

4 That's why we're before you today to ask you, to  
5 give us permission to build what Mr. Hodgkins termed a  
6 highly engineered pile of dirt in the middle of a field,  
7 because that's really what part A is.

8 The key purpose today is to allow us to do phased  
9 construction. And I have some introductory slides, which  
10 I'm going to skip right through because I think you know  
11 this project well, and I think Dan Fua hit the background  
12 really well.

13 I do, however, at least want to note the benefits  
14 of the setback levee. You have heard it, I think, in nine  
15 previous hearings. But it's worth noting, this provides  
16 superior protection within the area being protected, it  
17 has regional benefits, including lowering the water  
18 surface elevation for Yuba City and Marysville by a foot  
19 and a half.

20 It's consistent with the state's FloodSAFE  
21 program. We're not raising a levee here. We're moving a  
22 levee back and lowering water surface elevations for  
23 everybody.

24 Project has been slated to receive \$138 million  
25 for DWR. Lester Snow signed the official record I believe

1 earlier this week. It creates up to 1550 acres of  
2 riparian corridor, continued farming, or for environmental  
3 restoration and has no downstream or cross-stream  
4 hydraulic impacts. Letters of support from upstream,  
5 downstream, and across stream and environmental groups.  
6 It's really a remarkable project.

7           So what is the phased construction plan? We now  
8 construct part A, which are the elements that don't  
9 require any federal approval. And later, once the federal  
10 government provides approval, we construct part B. Those  
11 elements are the tie-ins which clearly require 408 to  
12 bring in the existing levee, which also requires 408, and  
13 the areas requiring a Section 404 permit, which requires  
14 obviously that permission from the Corps. And what I  
15 didn't note here, but there also may be certain Endangered  
16 Species Act issues that we need to avoid.

17           There could be an elderberry bush or two in those  
18 locations that we would obviously avoid, because the  
19 biological opinion doesn't apply to us yet.

20           So the two issues raised by your staff -- should  
21 the Board withhold the permit in light of the potential  
22 104 credit loss; and should the board withhold the permit  
23 because of a risk that the Corps will not eventually take  
24 these portions of the project into the Sacramento River  
25 Flood Control Project and thus, we will have wasted time,



1 effort, and energy.

2 I will address each of these two in turn, and then  
3 I will be available to answer any questions you have.

4 At the end of the day, public safety is paramount.  
5 This Board has stated many times, it's the mission of  
6 Three Rivers, and we would just as well not sit here  
7 during April, May, June, July, August, and September, with  
8 money in our pockets and big yellow machines ready to move  
9 dirt and not get started. So that's paramount.

10 The Board has to consider the risk of losing a  
11 credit versus the potential damages from a failure.

12 Just to make it clear, and to put a little context  
13 around the discussion earlier about Section 104 credits,  
14 there is over a hundred million dollars in Section 104  
15 credits for the work that Three Rivers has done. That  
16 means that Three Rivers, working with the State, has  
17 already obtained from the Corps agreement that if the  
18 Corps eventually builds a project which incorporates  
19 elements of the project that we have already built, then  
20 that over a hundred million dollars is available as the  
21 local share of the portion that the Corps will build.

22 So let's put it into concrete terms. Three Rivers  
23 is building all of the improvements required from RD 784.  
24 The only remaining element of the Yuba Basin project,  
25 which is the federal project we're talking about, is

1 Marysville.

2 Marysville is estimated at about \$50 million,  
3 traditional 65/35 split between fed and local, and the  
4 local obligation to do Marysville will be in the order of  
5 12, 15 million dollars.

6 We have a hundred million dollars in credit. We  
7 have a potential local need of 12 to 15 million dollars.  
8 We have far more credits already than we could use on that  
9 project.

10 Now, Jay has identified that the State is seeking  
11 legislation through the federal government which would  
12 allow those credits to be used outside of an authorized  
13 federal project. I think it's great legislation. I have  
14 clients who are supporting it. I advocate it with members  
15 of congress when I go back to D.C. But right now, it's  
16 not law. It's future law, we hope. But it's not current  
17 law, now.

18 And there have been examples where agencies and  
19 the State have been successful in getting legislatively  
20 approved 104 credit. So if we lost the 104 credit now, we  
21 might still pick it up later.

22 So what you are risking on the one side is  
23 potential loss of 104 credit, which has questionable  
24 value, versus waiting a year and having the improvements  
25 delayed for the year.

1           As far as I know, it would be unique to withhold a  
2     permit for this reason, for the reason of Section 104.  
3     I'm unaware of any permit you have ever issued with a  
4     condition that said that. Indeed, the December 2000  
5     approval didn't expressly require that. It required that  
6     we have 408 before we construct because we're required to  
7     do so. But 104 is an optional issue; it's not a mandatory  
8     issue.

9           And finally, we would argue that DWR, as the maker  
10    of the Proposition 1E grant or, in this case, agreement,  
11    should make the policy decision on whether construction  
12    should start prior to receipt of the credit. We are  
13    hopeful DWR will stand up today and support our position.

14           We think ultimately, the Reclamation Board, the  
15    Central Valley Flood Protection Board, today is in the  
16    position of being a regulator. Is this a good project?  
17    Should it go forward? And DWR is in the position of a  
18    funder. And it's really their policy decision as to  
19    whether the money should be spent, and a policy decision  
20    as to whether the money might be lost by not getting a  
21    future 104 credit.

22           We talked about the second issue raised by Dan,  
23    which I also agree is a legitimate issue. What are the  
24    chances that what we build won't be incorporated into the  
25    flood control project?

1           I just want to make sure that everyone understands  
2   that there's no legal requirement that that 408 come  
3   before it's constructed. 408 can come after the fact.  
4   Congress can legislatively make something part of a  
5   project after the fact. So there is no legal precedent  
6   that says we can't do it this way. And we also want to be  
7   clear that even though we don't have the 408, the Corps  
8   has been able to continue to be heavily involved in all of  
9   our work.

10           We submitted plans. They review them. They  
11   provide comments. We respond to comments. We resubmit it  
12   to them. You heard about the iterative process that Dan  
13   talked about, which we now expect to be wrapped up in  
14   early April, and we agree.

15           Most of the remaining issues actually relate to  
16   pump station 3 area, which is actually a part B. So there  
17   isn't likely to be construction related to those issues  
18   anyway. The construction would be part A.

19           But we continue to work with the Corps. We  
20   continue to have DWR oversee all of our designs because of  
21   a \$138 million grant. And DWR continues to coordinate  
22   with the Corps. And we continue to coordinate with your  
23   staff, because it's the right thing to do. Even though we  
24   could go out and construct it, we're not proposing to do  
25   so.

1           Finally, the existing levee cannot be degraded,  
2   and the tie-ins cannot be done until we get 408 approval.  
3   So there's no risk that the Board and the State is going  
4   to end up with a levee in the system which hasn't been  
5   accepted by the Corps. It can't physically happen because  
6   we can't connect it and get rid of the old levee until the  
7   Corps agrees.

8           We had a meeting in Washington D.C. about five  
9   weeks ago. And that meeting ultimately lead to the Corps'  
10   decision to require the EIS.

11           The statement by the assistant secretary during  
12   that meeting was a lot like Jay Punia's statement here:  
13   "I support this project. I think it's great. It's  
14   exactly the kind of project everyone wants to see. It  
15   benefits everyone and hurts no one."

16           But he said there was a process that had to be  
17   followed on the EIS. We're not asking you to violate a  
18   process. We're asking you to recognize that the law lets  
19   us construct a portion of this levee and finish the rest  
20   of it once we get 408 approval.

21           So finally, what's the importance of this action?

22           We have repeatedly made commitments to the public  
23   and to this Board that we will do everything in our power  
24   to complete by 2008. If we get approval from the Corps  
25   for 408 late this year, admittedly, October is tough. But

1 if they step up the schedule a little bit and we get  
2 approval in late August or September, we may be able to  
3 construct the federal elements before the flood season.

4 We could actually go from 18-year protection to  
5 200-year protection by starting now as opposed to waiting  
6 in until August.

7 So we've made those commitments, and we don't want  
8 to sit here for five or six months and do nothing. The  
9 issuance of this permit is the trigger for releasing  
10 funds. We want to get started. We want to acquire the  
11 land. We want to have time to work with the landowners  
12 and not be rushed, as we've been so rushed lately.

13 I've already identified the level of protection  
14 issue. Approval of this phased construction approach is  
15 the best way we've come up with protecting the 30,000  
16 residents that are out there in RD784. And we ask for  
17 your support today.

18 Thank you.

19 PRESIDENT CARTER: Any questions for Mr. Shapiro?

20 MEMBER RIE: Yes.

21 Mr. Shapiro, the tie-ins of the new levee to the  
22 existing levee, have you had discussions with the Corps  
23 about allowing that to be permitted now?

24 MR. SHAPIRO: We actually had discussions about  
25 that very issue, six, eight, ten months ago, and the Corps

1 determined that the tie-in approval was akin to approval  
2 to the grade of the old levee, that it was an alteration  
3 of the federal flood control system because it prejudged  
4 that the old levee would be degraded, and so the Corps  
5 ultimately decided that it did require 408 approval.  
6 Otherwise, we would be before you seeking to get that work  
7 as well.

8 MEMBER RIE: Because I know we had this discussion  
9 a few years ago with the western --

10 MR. SHAPIRO: The Bear River.

11 MEMBER RIE: Yeah.

12 MR. SHAPIRO: And the Corps' position has changed  
13 since then.

14 MEMBER RIE: At that time, they allowed the  
15 tie-ins to go forward, didn't they?

16 MR. SHAPIRO: On the Bear River, this Board  
17 approved us constructing the new levee and tying into the  
18 old levee. And the Corps agreed, in advance of 408. And  
19 we started that construction, and then the Corps granted  
20 408 for us to degrade the old levee and reuse the fill  
21 material in the new levee. And this Board agreed, and  
22 that's what we did.

23 So at that point, the 408 was required to degrade  
24 the old one. The Corps has since evolved in its thinking  
25 as 408 has gained some momentum and they are thinking

1 through how it works. And now the Corps has concluded  
2 that the tie-ins are 408, just as the Corps has now  
3 concluded that a slurry wall is a 408 action.

4 MEMBER RIE: Okay.

5 PRESIDENT CARTER: Mr. Hodgkins?

6 VICE PRESIDENT HODGKINS: Scott, do you know what  
7 the reduction in annual flood damages is attributed to  
8 this project?

9 MR. SHAPIRO: I don't. But Paul Brunner or Ric  
10 Reinhardt may.

11 VICE PRESIDENT HODGKINS: Does anybody know?

12 MR. SHAPIRO: I'm sure someone does. I don't know  
13 if anybody here does.

14 MEMBER BURROUGHS: Mr. President, I think we could  
15 call Steve Dawson. He does the permits. He may know.

16 PRESIDENT CARTER: Okay.

17 MR. REINHARDT: Risk Reinhardt, program manager,  
18 Three Rivers Levee Improvement Authority.

19 I don't know the numbers off the top of my head.  
20 We have calculated that and was submitted on our 1E  
21 application. And I can provide that to General Manager  
22 Punia, and he can distribute that to the board members at  
23 a later time.

24 PRESIDENT CARTER: Does Board staff have any  
25 feeling for that?



1           SUPERVISING ENGINEER FUA: No.

2           PRESIDENT CARTER: Okay.

3           MR. SHAPIRO: President Carter, I wonder if I  
4 could make one last comment that I forgot, in my notes.

5           PRESIDENT CARTER: Please.

6           MR. SHAPIRO: Simply, Dan Fua read Megan Nagey's  
7 comments and noted the issue of station 280 and noted that  
8 it should be conditioned that we not get closer than  
9 station 280.

10           We spoke with her about that before she left, and  
11 we had some question that that was the appropriate  
12 location. And she agreed that a modified condition, that  
13 instead of 280 it would be that we would work with them to  
14 not get closer than they agreed. And she accepted that.  
15 And Dan, I think if you look at your notes, you will see,  
16 she crossed out 280 and rewrote that instead. I just  
17 wanted to get that into the record.

18           PRESIDENT CARTER: Mr. Fua, can you confirm that.

19           SUPERVISING ENGINEER FUA: Yes. It's crossed out.  
20 But when she spoke to me about this, she said 280, so I  
21 thought it wasn't crossed out, but it is crossed out here.

22           MR. SHAPIRO: And she wrote additional language in  
23 there, I believe.

24           SUPERVISING ENGINEER FUA: But yes, we can work it  
25 out with the Corps to pinpoint which point exactly they

1 don't want construction to extend on the seepage block  
2 problem.

3 MR. SHAPIRO: And here, the issue was to make sure  
4 that we didn't go to a point and construct a slurry wall  
5 to a point where then linking up with that existing slurry  
6 wall, when we started activities back up, would create a  
7 problem, and we think it's a technical issue. We agreed  
8 with the issue. We just need to work out exactly what the  
9 point is, and we're not sure we agree that 280 is the  
10 exact spot.

11 PRESIDENT CARTER: Okay.

12 MR. SHAPIRO: Thank you.

13 MEMBER SUAREZ: Yes, Mr. Shapiro, why don't you  
14 read a sentence from the staff report in the environmental  
15 review on this project. And, "The actual project as  
16 designed by CEQA is not changing. No further CEQA  
17 findings or actions are required."

18 I was wondering if you could help maybe add some  
19 information regarding this to the record, why is this not  
20 segmenting or piecemealing under CEQA.

21 MR. SHAPIRO: This Board, as noted before,  
22 previously approved construction of this levee, the  
23 tie-ins, and everything under Corps approval. And you  
24 have already adopted all of the CEQA findings necessary to  
25 support that project.

1           We're bringing the same project back before you.  
2   We're just rearranging the order in which we're doing it.  
3   The rearranging of the order doesn't create any new  
4   environmental impacts.

5           And so it is a project, but it's the same project.  
6   And there's no need for you to adopt new CEQA findings, in  
7   our opinion, because you have already done it for this  
8   project. And I believe your counsel would agree that we  
9   had this same conversation before as well.

10           MEMBER SUAREZ: And that's the thing I would like  
11   to confirm, that you actually did see the staff report and  
12   saw the language.

13           LEGAL COUNSEL CAHILL: Yes. The permit includes  
14   the same items that were approved in December. And in  
15   December, you reviewed the EIR prepared by Three Rivers  
16   and made findings. And so unless there's a significant  
17   change in the project that would introduce new impacts, we  
18   think that you can rely on your earlier CEQA findings.

19           PRESIDENT CARTER: Any other questions for Mr.  
20   Shapiro?

21           Mr. Hodgkins?

22           VICE PRESIDENT HODGKINS: How much gap is there  
23   between the existing levee and the new levee?

24           MR. SHAPIRO: Can you ask the question again,  
25   Butch?

1           VICE PRESIDENT HODGKINS: How fast could you close  
2 the gap between this piece of setback and the existing  
3 levee if you had to?

4           MR. REINHARDT: Ric Reinhardt, Three Rivers  
5 program manager.

6           That was one of the reasons that we asked Megan to  
7 not put in the station, because we didn't have that  
8 information with us today to be able to carefully look at  
9 that issue and understand how large that gap would be with  
10 what the engineering issues are.

11           And from the figure that we have that Mr. Fua had  
12 in his presentation, the scale doesn't really help us  
13 quickly look at it and say that's 400 feet or 300 feet or  
14 600 feet. So unfortunately, we don't have an answer for  
15 you, and that's exactly why we wanted to have a dialogue  
16 with engineering staff on determining that appropriately.  
17 But from the discussion, I suspect it's on the order of  
18 hundreds of feet, and not thousands of feet.

19           MR. SHAPIRO: And I might also add that we have  
20 talked with a contractor that would likely be awarded this  
21 work about this phased approach. And they are pretty  
22 confident that if they get started on the part B work  
23 sometime in August, we can get it done, and we can get it  
24 done this year. And the later in the season it gets, the  
25 harder it gets. The more you look at 24-hour shifts and

1 things like that.

2 But the good news is, is that all of the part B  
3 work can be done during the flood season except the  
4 tie-ins.

5 So breaking that statement down to pieces, if we  
6 get permission -- I'll just pick a date -- August 15, the  
7 only work that has to be done to provide -- the only work  
8 that has to be done before the flood season are the  
9 tie-ins. And then the work, which requires 404 permits,  
10 could be done even after November 1, because you are not  
11 on the water now. You are working on the back-up levee.  
12 And so we could construct the part Bs, that are 404  
13 issues, starting in November or even December, and be done  
14 by December 31st, potentially.

15 PRESIDENT CARTER: Mr. Shapiro, maybe you could  
16 clarify what you just said in terms of what constitutes  
17 permission. Because is it the 408 approval, which is  
18 scheduled in October, or is it the EIS review which is  
19 scheduled in August?

20 MR. SHAPIRO: It's the 408 approval. And Megan's  
21 note noted that the commitment from the secretary was that  
22 408 would be done by October, not in October. And there  
23 are three different avenues we're pursuing to accelerate  
24 that schedule. One, for example, is delegation by the  
25 secretary of the 408 approval to the division that would

1 save anywhere from two to four weeks of the schedule.

2 The letter that Mr. Fua distributed to you today  
3 from Mr. Woodley notes that delegation issue. If we get  
4 that, we just save two to four weeks off the schedule.

5 We're also talking with the Corps about trying to  
6 shorten the post-EIS certification period from 30 days to  
7 something shorter; that could buy us another two to four  
8 weeks.

9 Every one of these incremental steps moves us  
10 closer and closer to the August date. And that's why I'm  
11 acknowledging there's that ambiguity there, but we're  
12 doing everything we can to pull the 408 approval right up  
13 to the conclusion of the EIS.

14 PRESIDENT CARTER: And let's say that we aren't  
15 able to do that, and an approval comes in October. Are  
16 you going to be able to tie in, in October?

17 MR. SHAPIRO: It will depend upon what the  
18 contractor is physically able to do, what the weather  
19 allows us to do, and what you permit us to do in terms of  
20 going into the flood season.

21 PRESIDENT CARTER: So I think I heard you say  
22 probably not, particularly what we might allow going into  
23 the flood season.

24 MR. SHAPIRO: For example, the year that we -- the  
25 winter we just completed, we didn't see any heavy rains

1     until I think January or February. And they were pretty  
2     clear forecast. And in a year like this, we could have  
3     done it no problem. And the stretch is --

4             PRESIDENT CARTER: But not in October. Probably  
5     later.

6             MR. SHAPIRO: Yeah. October was wet. You're  
7     right. And November and December dried up.

8             PRESIDENT CARTER: Mr. Brown?

9             MEMBER BROWN: The EIS, isn't that your critical  
10    path, just getting that completed?

11            MR. SHAPIRO: It is. And you will note in the  
12    same letter that's before you, the assistant secretary's  
13    commitment to accelerate that schedule as much as  
14    possible.

15            MEMBER BROWN: But you have reviews on it and  
16    hearings that you have to provide to the public and such.  
17    Can you complete the EIS in that period?

18            MR. SHAPIRO: We have the advantage of having an  
19    EIR already and having EA already and, actually, on  
20    Friday, the contractor produced the Draft EIS. It went to  
21    the Corps -- actually, it wasn't even a Friday. I think  
22    it was on Wednesday of last week -- excuse me, Wednesday  
23    of this week.

24            The Corps has committed to provide complete review  
25    to the EIS contractor within two weeks, and the contractor

1 will produce a Draft EIS the week after that. So we  
2 expect a Draft EIS to be on the street three weeks from  
3 now.

4 MEMBER BROWN: Good.

5 PRESIDENT CARTER: Any other questions for Mr.  
6 Shapiro?

7 Thank you very much.

8 MR. SHAPIRO: Thank you for your time.

9 PRESIDENT CARTER: Let's see, Mr. Qualley, did you  
10 want to address the Board?

11 MR. QUALLEY: I'm going to read directly from some  
12 notes I've prepared, not attempting to ad lib for the  
13 importance of this proceeding.

14 One of the guiding principals.

15 PRESIDENT CARTER: Mr. Qualley, just for the  
16 record, please identify yourself.

17 MR. QUALLEY: George Qualley, chief of Division of  
18 Flood Management, Department of Water Resource.

19 Once of the guiding principals of the FloodSAFE  
20 California initiative is to support and fund the projects  
21 that offer multiple or regional benefits. DWR's  
22 particularly interested in multi-objective projects that  
23 provide additional room for the river to meander and  
24 enhance general capacity.

25 The Feather River setback levee project proposed



1 by TRLIA is fully consistent with the FloodSAFE guiding  
2 principals and all of the applicable criteria for early  
3 implementation projects.

4 DWR has approved the project and the EIP and will  
5 soon be executing a funding agreement with TRLIA which, in  
6 conjunction with the flood board permit, will trigger the  
7 availability of bond funds.

8 The project is ready to go to construction, as  
9 you've heard. And any further delays at this stage of the  
10 project, or at this stage of the schedule, will preclude  
11 the possibility of having a setback levee in place before  
12 the 2008/09 flood season.

13 DWR has been waiting since early February for a  
14 favorable policy decision from the assistant secretary of  
15 the Army, which would simply indicate that the clock for  
16 counting the eligibility of work for a potential section  
17 104 credit, not an approval in itself, but just simply a  
18 statement that, you know, they can -- any work that's done  
19 after that could be considered for 104 credit. We're  
20 hoping for that policy decision before they award the  
21 contact, which is expected in early April.

22 Just yesterday, DWR received a March 17th letter  
23 from the assistant secretary of the Army, which was  
24 discouraging. As you have heard, it essentially denied  
25 the de-linking of the Section 104 and 408 approval

1 processes, which puts the State in a position of having to  
2 potentially forgo tens of millions of dollars in federal  
3 credit to enable the Feather River setback levee project  
4 to be constructed in 2008. And you will notice, I said  
5 tens of million of dollars, not \$130 million, because if  
6 you look at the numbers associated with the construction  
7 work, that would proceed in advance of the 408, and then  
8 do the math the way Section 104 is credited, it's in the  
9 order of 20 to 25 million dollars. That's the state's  
10 exposure for 104 credit for the construction work on the  
11 backup levee.

12 I want to be clear that Department of Water  
13 Resources has not given up on this issue. As we continue  
14 dialogue with Corps leadership, we will also pursue  
15 federal legislation to address a variety of issues,  
16 including 104, crediting in order to leverage expenditure  
17 of the state bond funds with future federal participation.

18 This is not an issue just for this project. It's  
19 an issue that's fundamental to all the work that we'll be  
20 doing under Proposition 1E.

21 So determination of DWR's position comes down to a  
22 consideration of public safety versus potential loss of  
23 federal credit. And the Department does not hesitate in  
24 supporting the approval of the project to move forward  
25 under the current schedule. The risk of people and

1 property of going through another flood season without the  
2 setback levee in place greatly exceeds the risk of losing  
3 federal credit for this project.

4 With regards to the unknown risk, as described in  
5 the Board staff report, associated to constructing part A  
6 of the phased project before federal approvals are  
7 granted, DWR participated in the technical review of the  
8 project design; we'll be monitoring the construction  
9 design for compliance with provisions in both the Board  
10 permit and the funding agreement; and is confident that  
11 the resultant levee will be suitable for acceptance into  
12 the federal flood control system.

13 Because remember, this is not a technical issue of  
14 people having issues with the project itself. It's a  
15 process issue within the Corps' approval process.

16 So in conclusion, on behalf of the Department of  
17 Water Resources, I encourage the Board to approve the  
18 modified encroachment Permit No. 18227 BD to implement  
19 phased construction of the setback levee project.

20 I would be happy to answer any questions.

21 PRESIDENT CARTER: Thank you, Mr. Qualley.

22 Any questions for Mr. Qualley.

23 Ms. Suarez?

24 MEMBER SUAREZ: Yes. Thank you.

25 I was wondering if you could share with us the

1 reasoning the Corps gave you for the communication you  
2 received yesterday on the 104? Was it a policy issue?  
3 Was it just --

4 MR. QUALLEY: It was a policy issue. And that's a  
5 tough one for me to be able to describe the Corps'  
6 reasoning.

7 Like I said, it's a process issue. The Corps has  
8 regulations and guidelines in place, and I will give you  
9 my personal opinion on one of the hang-ups on this. All  
10 of the Corps' processes and procedures they have in place  
11 are predicated on the idea that the Corps is going to be  
12 in the lead on the projects; the Corps is going to be the  
13 designer and constructor of the projects. So their rules  
14 are oriented towards that.

15 We're in a new paradigm where the State of  
16 California -- and there could be other states too -- are  
17 going to move forward with the projects. So they have got  
18 a lot of these rules in place that make perfect sense,  
19 from the perspective of the Corps being the lead agencies.

20 But, you know, as they themselves have  
21 acknowledged, the 408 process is something new. I mean,  
22 in the past, the section has been on the books for a long  
23 time, but there hasn't been any particular reason for  
24 local agencies to want to do that.

25 Why would you want to go forward on your own if

1 you can work -- coordinate with a federal project and have  
2 them cost share and, you know, you depending on -- you  
3 wind up paying a lot less for your share. So this is  
4 relatively new. The Corps is obviously struggling with it  
5 from a policy standpoint, and the assistant secretary just  
6 did not feel he was in the position to make that policy  
7 call.

8 But like I said, we have not given up. We are  
9 continuing the dialogue. We will pursue it because this  
10 is a fundamental issue for the rest of the programs that  
11 we plan to proceed with, with a number of projects.

12 PRESIDENT CARTER: Mr. Hodgkins?

13 VICE PRESIDENT HODGKINS: George, I think your  
14 statement about the Corps' feeling is correct. I mean,  
15 they are used to being in control here.

16 But has DWR ever thought about the possibility of  
17 perhaps having to go forward and say, we want you to take  
18 this piece of levee out of the Feather River system  
19 because we just can't live with your decision?

20 MR. QUALLEY: Are you talking about the setback  
21 levee in particular?

22 VICE PRESIDENT HODGKINS: Yeah.

23 MR. QUALLEY: There are some levees in the system  
24 that maybe shouldn't have been there in the first place.

25 VICE PRESIDENT HODGKINS: I did not mean that.

1           I guess it is not inconceivable to me that the  
2 Corps might not approve this project, especially as we  
3 move forward. And I am trying to understand what our  
4 strategy would be if that happened.

5           MR. QUALLEY: I would respectfully disagree with  
6 that view of the potential outcome, and here's why. We've  
7 been collectively working very closely with TRLIA and  
8 with -- you know, the Corps has been involved in the  
9 review of the design and the whole concept of the project,  
10 all the way through. There's been a number of design  
11 conferences just with staff with the Board senior  
12 consultants, with a whole variety of people.

13           So from a technical standpoint, we've got a pretty  
14 good consensus that this is a good project and with the  
15 Corps' involvement, that it really meets all their  
16 criteria.

17           And they themselves -- I was at the meeting back  
18 in February where they talked about needing an EIS, and  
19 even during that discussion, you know, the comments that  
20 were made at that meeting gave me the impression that,  
21 again, it was a process issue. There was -- they felt  
22 there were, you know, certain rules that they had to  
23 comply with, which, you know, led them to require an EIS.

24           But even during that discussion, I didn't hear any  
25 fundamental pushback on the project itself.

1           So I firmly believe that -- and actually, that's  
2 another good reason for the Board to issue a permit so  
3 then we can have the oversight of, you know, the State of  
4 California, and we'll be having the Corps engage in  
5 oversight of the project as well, because we all want to  
6 make sure the project is constructed to, you know,  
7 criteria acceptable to the Corps so that there's no  
8 logical reason why they wouldn't accept in the system.

9           They might have some comments, as was indicated  
10 earlier. You know, it's possible there are a couple of  
11 extra things that would need to be done to make that  
12 happen. But ultimately, I can't see any logical reason  
13 why it would not ultimately be accepted into the system.

14           MEMBER BROWN: Mr. Chairman?

15           PRESIDENT CARTER: Mr. Brown?

16           MEMBER BROWN: George, does this put you in an  
17 untenable position with third-party impacts and  
18 unreasonable demands later on?

19           MR. QUALLEY: Could you clarify a little bit more?

20           MEMBER BROWN: Well, when you go for the 408  
21 permit, you have adversaries to the project that would be  
22 an opportune time for them to make excessive demands.

23           MR. QUALLEY: Well, they will certainly have an  
24 opportunity to comment.

25           MEMBER BROWN: That's a question.

1           MR. QUALLEY:  When the EIS is being circulated.

2           MEMBER BROWN:  That's a question, not a statement.

3       So I was asking you that, if you thought it would be?

4           MR. QUALLEY:  Well, like I said, the adversaries  
5       will have an opportunity to comment during the EIS process  
6       and those comments will be addressed.

7           You know, we're talking about a big -- you know,  
8       this is a big project, a big public safety issue involved.  
9       And quite honestly, there aren't an awful lot of places on  
10      the system where you have those kind of opportunities to  
11      have that kind of impact on a project.

12          There isn't any project that's without risk.  
13      There are very few policy determinations that are without  
14      risk.  And Department of Water Resources, the entire  
15      executive management team, has thought very carefully  
16      about this, and yes, we understand there are some unknowns  
17      out there.  There's been all kinds of issues that have  
18      been dealt with to date, but ultimately, we feel we're  
19      confident in evaluating this project and feel it's  
20      important to move ahead.

21          I mean, I wouldn't want to be sitting there in the  
22      winter of '09 or the upcoming winter and God forbid  
23      something happens to that levee.  I've been through that  
24      before.  And I stood on that levee in '97 as the water was  
25      flowing through it.  I don't want to do that again.



1 MEMBER BROWN: Good point.

2 PRESIDENT CARTER: Okay. Any other questions for  
3 Mr. Qualley?

4 Thank you very much.

5 Are there any other persons in the audience that  
6 wish to address the board in support of the application?

7 Mr. Foley?

8 MR. FOLEY: I'm not in support.

9 PRESIDENT CARTER: Understand. You're welcome to  
10 address the Board.

11 MR. FOLEY: Good afternoon, board President.  
12 Thank you, again.

13 I have followed this since '04, since '03, since  
14 the Department of Water Resources discovered that the  
15 levees were in poor condition up there.

16 And what I have seen happen over and over again,  
17 and what I see happen again today, is the State, most  
18 especially this board, is led by TRLIA, and this is where  
19 we end up today. TRLIA has led you into this and you guys  
20 did not as a board do your job.

21 The Army Corps is your partner. You are the  
22 partner with the Army Corps on the State project --  
23 Sacramento Valley Flood Control Project. The Corps is  
24 your partner. Why do not you, as partner of the Corps,  
25 why did you not require, or see it be done, that an EIS be

1 done at the same time? Why did you not see that you're a  
2 Corps partner? That's a basic thing.

3 But why did you not? Because you rely upon SAFCA;  
4 you rely upon TRLIA, when that is the last thing you  
5 should be doing, considering that a small child could  
6 figure out there's private development interests pushing  
7 these local agencies, so it is not TRLIA that got you  
8 here. It's yourself.

9 Thank you.

10 PRESIDENT CARTER: Thank you.

11 Mr. Eres?

12 MR. ERES: Good afternoon. Tom Eres representing  
13 Hofman Ranch.

14 I'm not sure whether the issue is an opposition or  
15 what. But it does seem to me that we're really not here  
16 to talk about constructing a pile of dirt. I don't think  
17 we're here talking about putting together a backup levee.  
18 I think what we're talking about here is doing basically a  
19 brand new levee.

20 The realty of it is that what's before us today is  
21 an opportunity to construct this project without federal  
22 approval.

23 Whether the federal government is a partner or not  
24 I don't think is really the point. Is this the precedent  
25 that you want to set, that you want to have projects be

1 able to proceed to construction without having federal  
2 approval? If it's true, then don't put it in your permits  
3 anymore and live with the implications of what that might  
4 have.

5 A little history. I spoke to this Board many,  
6 many times over the past year and a half, including going  
7 up to your subcommittees, and I have appeared before or I  
8 have put comments into Three Rivers. They were simple:  
9 Combine your CEQA with your NEPA, do a combined EIR and  
10 EIS. I was ignored. The decision was to move forward.  
11 The chickens have come home to roost.

12 There is a 408 requirement. It does require a  
13 full Environmental Impact Statement, which was what I was  
14 suggesting to this board and to Three Rivers, going back a  
15 very long time ago.

16 The term piecemeal was used a little earlier in  
17 another context. And I would suggest that what's coming  
18 forward today is exactly that -- it's piecemeal. It's not  
19 doing it the way it's supposed to be done by rule of law,  
20 spirit of intent of the statutes, rules, and regulations.  
21 And this is a typical ends-justify-the-means kind of an  
22 approach, wrapped around the cloak of public safety,  
23 public safety, public safety, we're going to have a flood  
24 next November, 30,000 people will be at risk. We have  
25 property damage. We have other damage.

1           And you can see, when you connect the dots, what  
2   kind of a silhouette you get to provide you with this  
3   propulsion to come before or to have Three Rivers come  
4   before you again. There's an urgency; there's an  
5   emergency.

6           I would suggest when the final record is written  
7   on Three Rivers, that it will not be used as some sort of  
8   a standard operating procedure case as to how to do it  
9   right in terms of a process. This has been gangly. This  
10  has been disheveled from day one. And again, the chickens  
11  come home to roost.

12          What's the value of having the federal government  
13  at this stage of the game, this late in the process?  
14  Well, I'll tell you what it is in my view, which it is a  
15  check imbalance -- to check imbalance, because I think the  
16  Corps decision is going to help us find out systemwide  
17  that everything we have found out so far, cumulative  
18  impacts, better than we have found out so far.  
19  Comprehensive evaluation of the entire project in the  
20  context of again systemwide, which we don't have.

21          I would suggest to you -- it's in your packet, I'm  
22  sure, the February 15th letter from the Corps. And I just  
23  want to read this one section to you because I think it's  
24  important. "We, the Corps, will use a third-party  
25  contractor to prepare the EIS. The term, quote, 'third

1 party contractor,' closed quote, means the contractor paid  
2 by the applicant but selected and directed by this office  
3 to prepare the EIS. The Corps must ensure the information  
4 prepared by the third party contractor be consistent with  
5 Corps statutory responsibilities, to take a hard objective  
6 look at the public interest and environmental factors. As  
7 such, the third party contractor must provide unbiased,  
8 acceptable information which can be used as the basis for  
9 making a permit decision."

10 Now, the suggestion I am hearing today is, we've  
11 talked to the secretary to the Army, or under-secretary.  
12 This process is just fill in the checkmarks. We'll get  
13 this in two weeks; we'll get this in three weeks; we're  
14 going to have this happen.

15 Your point, sir, is very important, Mr. Brown.  
16 Where's the public in all of this? Are we presuming they  
17 have nothing to say? Nothing relevant? And that there  
18 isn't going to be some change in how the 408 is going to  
19 be applied, for example, as it now is to slurry walls?  
20 The issue is modification of levees. Aren't we supposed  
21 to be concerned with that? Isn't the public supposed to  
22 have an opportunity to express their views?

23 And I don't think it's being unreasonable and I  
24 don't think it's trying to impose impossible impediments  
25 with respect to this particular project. The point here,

1 is, again, following the rule of law and the process and  
2 procedure, and not go down the slippery slope of saying  
3 but, but, but, but, but. We're this far down the road.  
4 We have to do this. We have to do this. Public safety,  
5 public safety, public safety.

6 That's very intoxicating, very seductive, in terms  
7 of the calm, cool, collected, independent, detached  
8 evaluation the public expects from its -- I should say its  
9 public officials.

10 Again, the concern that I have here is that at the  
11 end of the day, your staff report says there are unknown  
12 risks. Three Rivers has tried to quantify that risk by  
13 saying, oh, it's only a 104 credit. We've got lots of  
14 credits. And while there may be some risk of losing  
15 additional credits, this is really a money issue.

16 Well, I respectfully disagree and I would take a  
17 look at Mr. Shapiro's balancing test, the fulcrum, and  
18 say, we are we talking about in addition to 404 credit?  
19 The project has not been permitted by the federal  
20 government. That's not a pedestrian. That isn't anything  
21 that you can say, ah, just blow it off.

22 And with respect to the fact that we don't know if  
23 it's going to be included in the federal plan of flood  
24 control -- and I think Mr. Hodgkins has it right. Nobody  
25 wants to answer his question: In the possible

1 one-thousandth of 1 percent chance that the pile of dirt  
2 doesn't get a permit, what are you going to do with it?  
3 How are you going to handle it? When are you going to try  
4 to create something in the way of a State secession from  
5 the federal government in terms of the permitting and say,  
6 we're just going to make it a state levee. I want to see  
7 DWR have that conversation all the way up the chain of  
8 command for them. That would be very interesting.

9           And what if it is a pile of dirt? I would suggest  
10 to that you that at this stage of the game, part of the  
11 concern that Three Rivers has by not having your permit  
12 is, there may be an implication with that pile of dirt not  
13 qualifying for a resolution of necessity for eminent  
14 domain. I don't know that there's a public necessity for  
15 a pile of dirt. I think there's a problem there.

16           And I'm not so sure DWR can go ahead and put  
17 Proposition 1E funds out there on a project that is a pile  
18 of dirt and potentially a back-up levee. That is not what  
19 the 1E application was, as I understand it.

20           There's a lot of prickly portions of this matter  
21 that's pending before you. And I know it's a modification  
22 of the permit, but, my goodness, are we really going to  
23 marginalize the value of the Corps of Engineers and the  
24 fact that it's a check and balance, and you are going to  
25 have a fresh look?

1           Remember, you were told 408 was not going to apply  
2   to your processes. My recommendation is that you  
3   postpone, if not deny, the motion for the modification to  
4   their existing permit until such time as you have that  
5   input from the Corps of Engineers.

6           Thank you very much.

7           PRESIDENT CARTER: Thank you.

8           Any questions for Mr. Eres?

9           MEMBER BROWN: No. But Mr. Eres presents a very  
10   persuasive argument. And I wonder if this might be more  
11   of a discussion or a request to -- between TRLIA and the  
12   Corps of Engineers instead of our Board.

13           It seems like it's the Corps that needs to be  
14   convinced to upkeep this project on schedule before we  
15   meet the flood season this coming year. And they are the  
16   ones that are putting up the barrier to preventing that  
17   from happening right now. Just a thought, Mr. Chairman.  
18   And I wonder what the Corps would say if that argument was  
19   presented to them.

20           PRESIDENT CARTER: Are there any other members of  
21   the audience who would like to address the Board?

22           Mr. Foley?

23           MR. FOLEY: I would like to say --

24           PRESIDENT CARTER: Go ahead and approach, please.

25           MR. FOLEY: Thank you again. I should have said



1   it the first time. But TRLIA has 50 million and let them  
2   use that to put it wherever they want. Don't involve the  
3   State. 50 million is quite a bit of money. Let them use  
4   their 50 million. Proceed with their own. 50 million in  
5   a hand does not -- things could proceed.

6           And also, I think DWR said earlier -- now I'm  
7   hearing DWR said no money released -- they said that here,  
8   no money released without the 408 permit, unless they  
9   changed. It's in the transcripts. Now they are saying  
10   something different today.

11           Thank you.

12           The public has to rely upon these things.

13           PRESIDENT CARTER: Thank you.

14           Anyone else wish to address the Board about the  
15   application?

16           The applicant, would you like to rebut?

17           MR. SHAPIRO: Thank you, President Carter and  
18   Members of the Board.

19           Let me start off addressing Member Brown's  
20   comments. This approach, the phased construction  
21   approach, has been discussed with Corps district staff,  
22   Corps district counsel, Corps division staff, Corps  
23   division counsel, headquarters staff, General McMahon and  
24   the assistant secretary of the Army.

25           Every one of them acknowledged this is a

1 legitimate way to proceed. They also acknowledge they  
2 have a process. And the process requires that we complete  
3 an EIS.

4 MEMBER BROWN: Did they -- what was the last one?

5 MR. SHAPIRO: Every one of them acknowledges this  
6 is a legitimate way to proceed. They also acknowledge  
7 they have a process, and their process for Corps approval  
8 requires completion of the EIS and granting of the 408  
9 approval.

10 I can't put words into their mouths. But I think  
11 the message, or at least the message I have gotten through  
12 talking to everyone up and down the chain about this, is,  
13 this is the best approach that everyone can think of. If  
14 you look back, everyone wants to get public safety sooner,  
15 but there's a process to follow.

16 And we were very clear when we first came to the  
17 Board staff and said, we believe the Corps supports this,  
18 or at least says, there's no reason we shouldn't do this.  
19 I believe your staff has called the Corps. That's why  
20 Megan Nagy came, to state that. That's why Megan wrote  
21 what she wrote.

22 So we made the appeal to the Corps, and the Corps'  
23 responded, they have a process, and if we want to go and  
24 do this, we can do this. And that's the best response  
25 we've gotten.

1           The other comment I wanted to make is, I'm  
2   actually somewhat in agreement with Tom Eres. This  
3   process has been gangling or gangly, or the other words he  
4   used.

5           This is not an example of how I think the Board or  
6   applicants want to deal with it in the future. But what I  
7   think it is, is an example of local agencies working with  
8   the State to figure out how we develop new flood control  
9   projects in a year when the Corps is not leading. And  
10   every time we come up with a new issue, the Corps raises a  
11   new issue, we find a new issue, we struggle through it,  
12   and we figure out how it gets done.

13           And so while Mr. Eres suggested people look back  
14   and say, the story will be written on Three Rivers, this  
15   isn't the way to do it. Actually, I have a slightly  
16   different view. I think people will look back on Three  
17   Rivers and say, they did the best they could in that era,  
18   and they got flood protection in, and that's what was  
19   important.

20           That's all the comments we have.

21           Thank you.

22           MEMBER RIE: Question.

23           PRESIDENT CARTER: Ms. Rie?

24           MEMBER RIE: I seem to recall -- going back to  
25   December 2005, there was discussion with the Corps and the

1 question was asked, do we need to prepare an EIS? And I  
2 believe the Corps either put it in writing or Jim Sandner  
3 spoke at our Board and said an EA would be acceptable.

4 So could you clarify? It seems to me you wouldn't  
5 go down the path of an EA. At what point did they direct  
6 you or not direct you?

7 MR. SHAPIRO: Let me see if I can give you a  
8 truthful yet brief answer, because I'm afraid if I  
9 characterize too much, it misstates what people have said.

10 The Corps doesn't speak with one voice. We hear  
11 one voice, but there are many voices within the Corps, and  
12 it wasn't until relatively recently from the operation  
13 staff that do the 408 approvals that we needed to have an  
14 EIS.

15 There was increasing concern as to whether EA was  
16 sufficient, but we believed it was based on the fact that  
17 of the four previous 408 approvals, none of them had  
18 required an EIS and so we relied upon that, we had  
19 communications, and they were already willing to review  
20 and examine an EA for adequacy.

21 There were some folks, we later found out, within  
22 the regulatory division, which is granted in the 404  
23 permit, that felt earlier on which that EIS was required.  
24 We didn't get that message. We were talking with the 408  
25 people, and the Corps, of course has two separate

1 channels, the 404 regulatory people and the 408 operations  
2 people.

3 So there have been a number of 408s that have gone  
4 through this Board before, and every one of them was  
5 handled either with an EA or with reliance on a tiered EA.  
6 And this was the first EIS we knew about.

7 And indeed, had we known that an EIS was truly  
8 required a year ago, we would have done it. I agreed with  
9 Tom Eres. He did and has consistently suggested an EIS.  
10 And we did not ignore that. We researched and believed it  
11 wasn't necessary, and that's why we didn't do it.

12 MEMBER RIE: Okay.

13 PRESIDENT CARTER: Mr. Brown?

14 MEMBER BROWN: Sir, I yield to Mr. Hodgkins.

15 PRESIDENT CARTER: Okay.

16 Mr. Hodgkins?

17 VICE PRESIDENT HODGKINS: I want to question  
18 Mr. Qualley a little further if I can.

19 Please come up, George.

20 George here's where I'm struggling. If this was  
21 TRLIA's money, I would say do it. Okay? But 163 million  
22 of it is money that if somehow this doesn't get approved,  
23 and if you listen to what Scott just said about this  
24 process, it hasn't gotten easier; it's gotten harder,  
25 which, to me, is the beginning of the signal that the

1 State and the Corps are not communicating. We are not on  
2 the same page. Okay? That's my interpretation.

3 So I'm sitting here struggling with, I want to be  
4 a team player with DWR in the worst way. I think that's  
5 critical. At the same time, I know there are other needs  
6 out there for that money, or there will be. And if  
7 somehow this turns into a match between the Corps and the  
8 State over who the hell is in control over here -- and  
9 while I don't think the State does business that way, you  
10 know, if I look at vegetation and I look at the work on  
11 the 408 task force, I don't know where we're going. And  
12 I'm really concerned about it.

13 We're not making any progress unless there was  
14 progress this morning on either of those issues. We're  
15 getting farther apart, not closer.

16 Can you -- is there any reason to think we're  
17 getting closer?

18 PRESIDENT CARTER: You would like me to respond?

19 VICE PRESIDENT HODGKINS: Yeah.

20 PRESIDENT CARTER: In a word, no. I have the same  
21 concerns.

22 VICE PRESIDENT HODGKINS: Okay.

23 So George, I want to be a team player, but I don't  
24 want to potentially have \$165 million get spent and then  
25 have the Corps not approve this.

1           You said you spoke for DWR.

2           MR. QUALLEY: Yes.

3           VICE PRESIDENT HODGKINS: Given what I just said,  
4 is DWR thinking about any of that? Is that part of their  
5 thinking? Is this something that's gone up the chain  
6 where the director is aware of what we're doing and is  
7 supportive of this?

8           MR. QUALLEY: Yes. Director Snow is aware and  
9 Deputy Director David Gutierrez is aware of the statement  
10 I was going to make today.

11           Myself and numerous other staff, both at the  
12 working level and management level, have engaged in  
13 numerous conversations with the Corps of Engineers and a  
14 combination of other people. And in all of the meetings  
15 that I have been in, it's been the discussion around  
16 issues, you know, technical issues to resolve, you know,  
17 thinking about different design considerations.

18           But in every single meeting, what I've -- the  
19 impression that I've always had is that we were working  
20 together as a team, as you would with any project, to, you  
21 know, look at all the different aspects of it, technical  
22 aspects, process aspects, so that you wind up with a good  
23 project.

24           If I really believed that there was a fundamental  
25 belief that the Corps has -- or some kind of mission that

1 they were under to not approve this project, or to have  
2 serious problems with the way it was configured, I would  
3 not be making the statements I'm making today. In the  
4 meeting and in particular the February meeting where the  
5 colonel made the difficult decision to move forward with  
6 an EIS -- and Mr. Brown indicated earlier that the same  
7 type of arguments and discussion we've had here today,  
8 they need to be made with the Corps, all of those  
9 arguments that you heard during today's meeting were made  
10 at that meeting with the Corps.

11 And I will tell you, you could see the agony in  
12 the colonel's face. It was a very, very difficult  
13 decision for him, because he made some remarks that he  
14 fully understood the public safety aspects and the need to  
15 move forward. But, you know, he -- and his role, in his  
16 position, he really had to make the decision that he made  
17 about requiring an EIS and fully understanding the other  
18 implications.

19 And then, of course, following that meeting, there  
20 was a number of other meetings, high level meetings that  
21 Scott Shapiro mentioned. And I will confirm that the  
22 state representatives who were in many of those same  
23 meetings, and I will confirm what he said, that the Corps,  
24 in those meetings was -- you know, understood that what  
25 they had done with the Corps and the EIS made it very



1 difficult in terms of the schedule to move forward. And  
2 they were, you know, offering different ways to try to  
3 move the process along as quickly as possible.

4           So in my mind, the process issues with the  
5 Corps -- I've worked with the Corps off and on for 20  
6 years. And I understand that those issues are  
7 fundamental. They are driven by their congressional  
8 director. They are driven by their regulations. They  
9 take policy interpretation very seriously. And so those  
10 are process decisions that they've arrived at.

11           But I have never gotten the impression that they  
12 were fundamentally against this project or that, you know,  
13 with proper guidance and control, as the design gets  
14 completed and as the construction gets done, you know, to  
15 make sure that things are done according to the  
16 specifications, which meet Corps criteria.

17           I've never gotten the impression or any reason to  
18 believe that they will not ultimately be accepted as part  
19 of the system.

20           So I appreciate your wanting to be thorough. We  
21 also want to think of a plan B. I just can't see it going  
22 in that direction.

23           VICE PRESIDENT HODGKINS: Thank you. I really  
24 appreciate your standing up here and being so caring about  
25 this. That's very helpful.

1 Thank you.

2 PRESIDENT CARTER: Okay. Mr. President?

3 MEMBER SUAREZ: May I ask a quick question.

4 PRESIDENT CARTER: Absolutely.

5 MEMBER SUAREZ: Mr. Qualley, just to educate the  
6 ignorant, Three Rivers, they get one big check, or is it a  
7 schedule of payments?

8 MR. QUALLEY: It gets doled out incrementally.

9 MEMBER SUAREZ: There's a possibility that as  
10 money is flowing, and there's a recognition that there's a  
11 problem, that you will stop spending money when you think  
12 it's coming to a halt or wall.

13 MR. QUALLEY: Yeah. I mean, everything has been  
14 very carefully laid out. The work plan -- the work is  
15 divided into various project elements. And, you know,  
16 we'll be submitting invoices that are consistent with the  
17 work plan, and we will have inspectors out there.

18 They, of course, will have inspectors to make sure  
19 the work is prosecuted as it's supposed to. But we will  
20 have inspectors out there to make sure that the work is  
21 being done in a way consistent with the funding agreement  
22 and consistent with the Corps' regulations. So we'll be  
23 very closely monitoring the progress of all the  
24 activities.

25 MEMBER SUAREZ: So between now and August, for

1 approval, are you spending the 130 million?

2 MR. QUALLEY: Well, the money will be spent as the  
3 work proceeds. And, you know, we've authorized up to a  
4 maximum of \$138.51 million, and as work proceeds and as  
5 they can demonstrate that the expenditures remain, we will  
6 be funding that as it goes along.

7 In the case of right of way, there is provisions  
8 in the funding agreement to advance -- well, actually  
9 there's advance provisions in the agreement that, you  
10 know, allows them to, you know, estimate work that's going  
11 to be done. And then as invoices come in, we reconcile  
12 the invoices with advances to keep the work proceeding.  
13 But we will also be, you know, confirming the work is done  
14 in accordance with the agreement and the work plan.

15 PRESIDENT CARTER: And those funds will be made  
16 available in advance of a potential 408 approval?

17 MR. QUALLEY: Not all the funds. It's incremental  
18 advances, like for right-of-way purposes and for some  
19 segments of the work.

20 PRESIDENT CARTER: So do you have strings attached  
21 to the funding that limit the amount of funds that can be  
22 released without 408 approval?

23 MR. QUALLEY: The -- well, the funding -- the work  
24 that they are proposing to go forward with without the 408  
25 is the work on the back-up levee itself and the associated

1 right-of-way work. And that's what we would allow to go  
2 forward, because they won't be able to do the tie-in work  
3 until the 408 is approved.

4 PRESIDENT CARTER: So you are saying that DWR is  
5 prepared to contribute their share of everything in part A  
6 of the permit?

7 MR. QUALLEY: That's correct.

8 PRESIDENT CARTER: Revised permit.

9 MR. QUALLEY: That's correct.

10 PRESIDENT CARTER: In advance of 408 approval.

11 MR. QUALLEY: Yeah. And of course, everybody is  
12 hopeful that some of these steps that might shorten the  
13 process to work can be approved.

14 But, yes, that statement is correct.

15 PRESIDENT CARTER: Thank you.

16 SECRETARY DOHERTY: Mr. Chairman, may I ask  
17 Mr. Punia a question? Is there -- are there a lot of  
18 other applications requesting funds, these funds, out  
19 there right now?

20 EXECUTIVE OFFICER PUNIA: Early implementation?

21 SECRETARY DOHERTY: Yes.

22 EXECUTIVE OFFICER PUNIA: Yes, and there will be  
23 more in the pipeline, yes.

24 SECRETARY DOHERTY: Is there a possibility,  
25 Ms. Cahill, if we did this without the 408 and somebody

1 else wanted funds, and now we say they are not available,  
2 would there be a lawsuit over that?

3 LEGAL COUNSEL CAHILL: There's always the  
4 possibility of a lawsuit. The real question is whether  
5 they would win. And I just --

6 MEMBER RIE: Keep in mind that any other  
7 applicants out there have to go through 408 too.

8 SECRETARY DOHERTY: Right. I understand that.  
9 That's what I'm saying. And then they are going to say,  
10 hey, they didn't, so why should we?

11 PRESIDENT CARTER: Any other questions?  
12 Does the applicant have any further rebuttal?

13 Thank you, Mr. Qualley.

14 MR. SHAPIRO: Just a single sentence.

15 I don't know if I noted earlier, but in the  
16 ultimate irony, the Corps will be doing inspection work if  
17 we construct part A as well.

18 PRESIDENT CARTER: Thank you.

19 MEMBER RIE: They've already agreed to do that?

20 MR. SHAPIRO: All of the project work that we do  
21 with the Corps leaves open the ability for us to request  
22 that the Corps certify the levee at the end. Indeed, the  
23 work we've done thus far, the Corps has certified. And so  
24 the Corps provides inspection services during construction  
25 so that they can, at the end, ensure the levee was

1 constructed the way it was designed.

2 So they are reviewing our plans, they will be  
3 inspecting as we construct, and then October, August,  
4 September, we seek 408 approval to do the rest.

5 MEMBER RIE: Did they inspect the Bear River  
6 levee?

7 MR. SHAPIRO: Yes.

8 MEMBER RIE: Before we had accepted that? Or  
9 before the Corps accepted it into the system?

10 MR. SHAPIRO: Yes. In fact, they inspected the  
11 inspection trench, which was before 408 was given, for  
12 example.

13 PRESIDENT CARTER: In fact, the Corps has not  
14 accepted the Bear River levee into the system yet.

15 MEMBER RIE: Oh.

16 MR. SHAPIRO: Mr. Sandner disagrees with that, but  
17 I will let him argue that point when he comes back.

18 LEGAL COUNSEL CAHILL: Could I ask a quick  
19 question.

20 PRESIDENT CARTER: Yes.

21 LEGAL COUNSEL CAHILL: I'm just wondering, Scott,  
22 if you could tell us what the alternatives are in the EIR  
23 and/or what the alternatives were that were noticed in the  
24 original notice of preparation.

25 MR. SHAPIRO: Well, I can tell you what the

1 alternatives are, were in the EIR. I don't know what they  
2 are in the EIS, but it's basically on the same document.

3 Ric or Paul may know.

4 But I'm guessing they are very much the same.  
5 There's a no-project alternative, that we don't do any  
6 work; there's a strengthen-in-place alternative, that we  
7 strengthen the existing levee, which has been strengthened  
8 for 50 years now and still has problems; that we construct  
9 a setback, the one that we are going to construct assuming  
10 we get the approval; and then what's called the  
11 intermediate setback, which is a smaller setback that  
12 takes less of the farmland but doesn't provide the same  
13 hydraulic benefits.

14 And they are the same, Paul Brunner confirms.

15 MEMBER RIE: Is there a levee raise alternative?

16 MR. SHAPIRO: No. This is your easy no levee  
17 raise project of the day.

18 PRESIDENT CARTER: How dare you bring that up.

19 EXECUTIVE OFFICER PUNIA: The issue is seepage  
20 there, not the hydraulics.

21 PRESIDENT CARTER: Any other questions of the  
22 applicant?

23 Does the staff wish to offer any rebuttal  
24 testimony? Mr. Fua?

25 SUPERVISING ENGINEER FUA: This is not a rebuttal,

1 but it's just a clarification. On the permit, the draft  
2 permit before you, I just want to clarify that the  
3 degradation of the existing levee that is allowed in the  
4 draft permit is only for those that are necessary for the  
5 tie-ins. So the permit is not allowed degradation of the  
6 majority of the existing levee.

7 PRESIDENT CARTER: And is it clear in the permit  
8 that this is the case?

9 SUPERVISING ENGINEER FUA: Yes. But I heard  
10 Mr. Scott Shapiro talking about what I thought was the  
11 entire levee, so I wanted to make that clarification.

12 PRESIDENT CARTER: Okay. Thank you.

13 Any other questions from staff?

14 All right.

15 At this time, I would like to close the public  
16 testimony portion of the hearing. And we will go ahead  
17 and deliberate.

18 Board member comments? Motions?

19 VICE PRESIDENT HODGKINS: I think this is a really  
20 tough one because there's different perceptions as to how  
21 well we're working together with the Corps here.

22 But I appreciate DWR and Mr. Qualley's leadership  
23 in showing up here today and in making very clear that DWR  
24 supports moving ahead with this. And while there is a  
25 risk here that potentially we may have to come back and



1 figure out how we untangle this if the Corps doesn't  
2 approve this, I suspect there's a way to do that. I'm not  
3 sure what it is.

4 And I'm going to move that we go ahead and grant  
5 the modification to the permit that would enable them to  
6 go forward with the work outside of the connections as  
7 soon as they can.

8 PRESIDENT CARTER: Okay. So we have a motion to  
9 approve the modification to the permit.

10 Is there a second?

11 MEMBER BROWN: I will second, Mr. Chairman.

12 PRESIDENT CARTER: And we have a second.

13 Discussion?

14 Ms. Suarez?

15 MEMBER SUAREZ: Thank you, Mr. President. I would  
16 like to have just a dialogue for a second regarding the  
17 issue Mr. Fua mentioned, regarding whether this is the  
18 first time the Board, that at least anybody can recall,  
19 where we actually have granted a permit for construction  
20 to occur prior to Corps opportunity.

21 I don't know if that's a distinction that makes a  
22 difference, but I would like to have some expert opinion  
23 that know a lot more about these things than I do. Is it  
24 a matter of policy or as a practical matter? Is this  
25 particular threshold that we may be crossing a concern or

1 should it be? So I would invite Board input on that and  
2 anybody can talk.

3 MEMBER RIE: I can. I can add something.

4 408 is relatively new, and I think Three Rivers,  
5 the Bear River setback levee, was the first time we ever  
6 applied for 408. So prior to the Bear River setback  
7 levee, we weren't getting Corps approval. We were getting  
8 Corps review, Corps comments. And then we made the  
9 decision to issue the permit. And we were tying in, I  
10 think, the Bear River. We approved that, to tie into the  
11 existing federal levee.

12 And then I might have this wrong, but I think we  
13 also had the discussion on the western interceptor canal  
14 levee. There was a big discussion with Steve Bradley back  
15 in 2005, whether that should be 408 or not 408. The  
16 Corps -- and I had the conversation with the Corps. They  
17 made the decision it wasn't 408. Now, in this particular  
18 case, it is a 408.

19 So you know, I think depending on who you talk to  
20 at the Corps, we're going to get a different answer. And  
21 we had the discussion back in 2005 whether we were doing  
22 an EA or an EIS. Everybody was talking about it, and I  
23 think there was probably someone in the Corps that thought  
24 an EIS wasn't required. And you know, now it's a  
25 different story.

1           And we've had other projects that have been  
2   phased, and setback levees were built prior to this board  
3   issuing permits. Within the time I've sat on this board,  
4   we've done it.

5           MEMBER BROWN: Mr. Chairman?

6           PRESIDENT CARTER: Mr. Brown.

7           MEMBER BROWN: The Corps is certainly aware of  
8   this project and for them to come in at the almost the  
9   12th hour on this thing, and now require an EIS, it's  
10   troubling. And then putting the onus on this board to  
11   proceed or not to proceed, based upon their finally  
12   deciding that an EIS was required, it seems like this is  
13   something that they could have helped the project all  
14   along, if they had made that decision six months ago.

15          So just a statement.

16          PRESIDENT CARTER: Okay. Thank you.

17          Any other comments from the Board?

18          I have a couple -- as we've heard today, the  
19   situation that we're in is, in terms of, if we do not go  
20   ahead and we do not grant the permit, it may preclude have  
21   a setback levee -- or it will preclude having a setback  
22   levee in place for the next season, even if Three Rivers  
23   decides to go ahead and proceed without a permit from the  
24   Board, because they will not be able to encroach upon the  
25   levees to tie them in.

1           However, going ahead doesn't guarantee that we  
2   have a setback because of the uncertainty of the Corps'  
3   process and their timing. And I -- this is a changing  
4   world and the Corps is redefining its processes, and as I  
5   believe Mr. Hodgkins points out, it's not getting easier;  
6   it's getting harder.

7           And this project is a great example of that,  
8   because the Corps has kind of changed the rules of the  
9   game at least three times on this project, during the  
10  history of it, requiring additional investment, additional  
11  work, rework. And so the -- I'm springboarding off what  
12  you said, Mr. Brown, in terms of the troubling nature of  
13  the Corps coming in and changing the rules of the game  
14  again, at the 11th hour, I think it's indicative of the  
15  Corps' posture.

16          We have heard a lot of people say that the Corps  
17  is in support of that, but we haven't heard anybody from  
18  the Corps say that. And unfortunately, Ms. Nagey is not  
19  here. What comments were read from her notes were not in  
20  support, were not in opposition. It was basically a  
21  statement of facts in terms of the situation. If we go  
22  ahead, this is going to happen; if you don't go ahead,  
23  this isn't going to happen.

24          So we really have not heard any real testimony as  
25  to whether or not the -- from the Corps, directly, whether

1 or not they are in support or not. We don't know how  
2 they -- where they stand. And furthermore, if we knew  
3 where they stood today, we don't know where they would  
4 stand in four months, quite honestly. So this is a very,  
5 very difficult decision for us.

6 MEMBER BROWN: Mr. Chairman, the proponents,  
7 what's the chance of coming back in 30 days with some kind  
8 of a statement of support or something from the Corps?  
9 You know, I would like to hear at least something from  
10 them saying that, we're not -- where you're not having to  
11 speak for them. That would be helpful. Right now, we're  
12 kind of guessing as to where they are. So what's the  
13 chance of -- if we schedule a meeting in two or three  
14 weeks if we had to.

15 PRESIDENT CARTER: We could schedule -- it's  
16 possible to have a special meeting. We would essentially,  
17 I guess, continue this hearing; is that correct,  
18 Ms. Cahill?

19 LEGAL COUNSEL CAHILL: We could either continue  
20 this one or call a new one. You would have enough time.

21 MEMBER BURROUGHS: Continue.

22 PRESIDENT CARTER: Or call a new one. So that is  
23 a possibility.

24 Mr. Punia?

25 EXECUTIVE OFFICER PUNIA: I just want to give my

1 perspective on the project.

2 I think I fully agree with George Qualley that I  
3 cannot foresee Corps not adopting this project back in the  
4 federal flood control system. Because we've been to the  
5 meetings where Corps technical staff was engaged. Their  
6 concerns were addressed and incorporated into the design.

7 And if you recall a little bit back, the way  
8 the project -- the Corps hasn't built all the levees.  
9 They adopted the levees. So if this levee is built, which  
10 is on a better foundation and better design, I cannot  
11 foresee any reason why Corps will not adopt this levee  
12 back into the federal flood control system. So I just  
13 want to diffuse the concerns the Board has, that this  
14 levee will be standing alone and not adopted back into the  
15 federal flood control system.

16 MEMBER RIE: And I don't think there's any  
17 possibility that the Corps will write a statement that  
18 says they are in support. They can't.

19 SECRETARY DOHERTY: It violates their own rules.

20 MEMBER RIE: You know, they cannot make a  
21 determination of public interest until that EIS is out  
22 there and they have received the public comments.

23 MEMBER BROWN: You're right. That's not a good  
24 decision. That's not a good alternative.

25 EXECUTIVE OFFICER PUNIA: Yes. We may not get any

1 additional information within 30 days from the U.S. Army  
2 Corps of Engineers.

3 MEMBER BROWN: I think we ought to vote on it now,  
4 Mr. Chairman.

5 PRESIDENT CARTER: Okay.

6 Any further discussion? Comments?

7 We have a motion before us: The motion is to  
8 approve modification of Permit No. 18227 BD, Three Rivers  
9 Levee Improvement Authority, Phase 4, Feather River Levee  
10 Improvement Repair Project, Segment 2, Feather River  
11 Setback Levee in Yuba county has been seconded.

12 Mr. Punia, call the roll.

13 EXECUTIVE OFFICER PUNIA: Board Member Emma  
14 Suarez?

15 MEMBER SUAREZ: I will pass.

16 EXECUTIVE OFFICER PUNIA: Board Vice President  
17 Butch Hodgkins?

18 VICE PRESIDENT HODGKINS: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

20 MEMBER RIE: Aye.

21 EXECUTIVE OFFICER PUNIA: Board Member John Brown?

22 MEMBER BROWN: Aye.

23 EXECUTIVE OFFICER PUNIA: Board Member Rose Marie  
24 Burroughs?

25 MEMBER BURROUGHS: No.

1 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

2 SECRETARY DOHERTY: No.

3 EXECUTIVE OFFICER PUNIA: Board President Ben  
4 Carter?

5 PRESIDENT CARTER: Aye.

6 EXECUTIVE OFFICER PUNIA: Ms. Suarez?

7 MEMBER SUAREZ: Aye.

8 PRESIDENT CARTER: Motion carries.

9 Thank you very much, ladies and gentlemen.

10 Let's take a ten-minute break, and the hour is  
11 late. We may make some changes to the agenda.

12 (Thereupon a break was taken in  
13 proceedings.)

14 PRESIDENT CARTER: All right, ladies and  
15 gentlemen.

16 If there's anybody left out there, please take  
17 your seats and we will continue with our agenda. Just a  
18 process check. We have the folks from West Sacramento  
19 here to present their preliminary development plan, and  
20 they promise to be concise.

21 Will the Board consider perhaps postponing Items  
22 12 and 15 to next meeting? On Item 15, I have to confess,  
23 I have failed you, because I promised to get my input into  
24 Jay before this meeting, and I have not. So it may be in  
25 the best interest to postpone that.



1           MEMBER RIE: I move to postpone all the items  
2 except for the West Sac presentation, until the next Board  
3 meeting.

4           MEMBER BROWN: Second.

5           PRESIDENT CARTER: A second.

6           Any discussion?

7           Well, okay. Let's not postpone 16, because that's  
8 to adjourn.

9           You accept that amendment?

10          MEMBER RIE: Yes.

11          PRESIDENT CARTER: Okay. Call the roll. We will  
12 do that then. It appears there's a general agreement.

13          At this point, I would like to proceed with Item  
14 11, West Sacramento Triangle Area, Tower Bridge to Pioneer  
15 Bridge, Preliminary Development Plan.

16          Is Mr. Butler going to do this, or --

17          STAFF ASSISTANT PENDLEBURY: Yes, he is. He'll be  
18 right back.

19          CHIEF ENGINEER HESTER: I can track him down.

20          PRESIDENT CARTER: Maybe we will allow the  
21 applicant to begin then.

22          Would you like to go ahead and proceed?

23          Thank you, President Carter and Members of the  
24 Board.

25          MS. ZUSPAN: My name is Shanna Zuspan. I am a

1 redevelopment project manager at the City of West  
2 Sacramento.

3 I focus most of my work on managing the River Walk  
4 improvements. Just in case we did decide -- we end up  
5 running late, we did prepare two versions, so I will pull  
6 out the short version of my prepared comments for today.

7 But basically what I wanted to talk about today  
8 was our plans in the triangle. Most of the presentation  
9 will be done by Scott Shapiro as a consultant to City of  
10 West Sacramento on the flood protection program.

11 But in terms of background, what I did want to say  
12 was that during 2006 the City was before the Board really  
13 requesting feedback on a couple of different design  
14 parameters that really would impact the way in which our  
15 riverfront improvements are anticipated to be implemented  
16 as well as the location of where development would go in  
17 the area that we call the triangle, which is really the  
18 area from the Tower Bridge to the Pioneer Bridge in West  
19 Sacramento.

20 Scott will discuss this in more detail, but  
21 essentially the triangle area is a high ground formation.  
22 And so when you are out there in the triangle, you  
23 necessarily aren't able to visually see where the levee  
24 is. This can make it tough to figure out sort of where  
25 buildings ought to be placed relative to that levee, that

1 you can't necessarily see.

2 For those of you who were involved in the 2006  
3 process, many of the board members actually came to West  
4 Sacramento and toured that site to see the high ground  
5 formation.

6 Specifically during the 2006 process, we were  
7 looking for a feedback on two items. One was, how high  
8 the promenade along the riverfront ought to be built,  
9 around what elevation; and secondly, how far back the  
10 buildings ought to be from the water's edge, what we call  
11 the building setback line.

12 Sort of fast forward two years to where we are  
13 today, and some things have changed. In particular, you  
14 have heard from other members in the city, Will Chow, and  
15 Ken Ruzich with RD900. The City has, in essence, a  
16 renewed and refocused flood protection program.

17 So with regards to the first point that we were  
18 seeking feedback on a couple years ago, for folks like me,  
19 who work in the triangle, we really know now that how we  
20 design our river walk will be consistent with our citywide  
21 goals of achieving 200-year flood protection, and the  
22 elevations will be constructed as such.

23 With regards to the second point in terms of how  
24 far the buildings ought to go back from the water's edge,  
25 we think we have a better proposal today than we had two

1 years ago, one that really incorporates the latest  
2 thinking in flood protection and provides adequate room  
3 for flood fighting and bank stabilization.

4 Just in terms of a little bit of discussion about  
5 the current process, I just want to personally thank the  
6 staff or the Board, the Department of Water Resources, the  
7 Army Corps. They have been working very closely with us  
8 over the last several months, including the property  
9 owners. Ms. Lynne Yackzan is in the audience today, who's  
10 a property owner in the triangle.

11 I think that the process has been very fruitful  
12 and we've had a lot of great dialogue and a lot of  
13 communication that I think have benefited both parties in  
14 terms of addressing people's position.

15 So with that, I'd like to turn it over to Scott  
16 who will go over the PowerPoint.

17 PRESIDENT CARTER: Thank you, Ms. Zuspan.

18 If we could perhaps, Mr. Butler, do you have  
19 comments you would like to make in the 30 seconds you have  
20 got?

21 SENIOR ENGINEER BUTLER: Forgive me. I was  
22 detained.

23 All I wanted to really open with today was just a  
24 couple of comments that what we've wrestled with here over  
25 the past few months was a situation where it was unclear

1 as to the jurisdictional levee in the area. We have a  
2 high ground, which Scott will further go into detail with  
3 you about, and, really, the Board was struggling with the  
4 question of, well, we're not sure where the levee is, so  
5 since we don't know where the levee is, we can't really  
6 tell you how close to the water you can begin development.

7           So we've kind of had this catch-22 of, we want to  
8 get you guys started, but we don't know how to do that.  
9 And over the course of, really, I think, since autumn  
10 through the winter, the cities worked very closely with us  
11 and did some further investigative research into the high  
12 ground in the area, and a lot of the presentation is going  
13 to go over that with you.

14           But I am just pleased to be a part of this process  
15 here. Shanna and Scott and I are going to continue to  
16 work with a technical group as we pursue further  
17 discussions on how -- as the city moves forward and the  
18 developers move toward this area, how the Board will  
19 continue to interact with the City and developers to allow  
20 construction of the development to begin, and also to  
21 address the issue of future increases in the level of  
22 flood protection through this reach of the river along  
23 West Sacramento.

24           So that's really the conclusion of my comments.

25           I will turn it over to Scott now.

1           PRESIDENT CARTER: Mr. Shapiro, welcome back.

2           MR. SHAPIRO: Thank you, President Carter and  
3 Members of the Board.

4           I will respect your time commitment. What I would  
5 like to do today is to explain why we're here. In  
6 particular, I want to illustrate why we can't figure out  
7 where the levee is. I want to talk about how we came up  
8 with a methodology for figuring out where the levee is,  
9 make sure that you appreciate that the solution we came up  
10 with is going to be consistent with future improvements,  
11 and then, importantly, obtain feedback from the Board.

12           The reason to do this is so that we could come  
13 back to you with our solution in hand for your blessing as  
14 an action item. It's not an action item today. But we  
15 really invite feedback from you so we don't go through a  
16 two- or three-month process of getting everything in  
17 place, to find the Board isn't interested in our solution.

18           So let's go through the issues. So this is West  
19 Sacramento. It's a lightly shaded area. The dark shaded  
20 area is the triangle. It's bounded by the Sacramento  
21 River, former State Highway 275 and Highway 50/Business  
22 80.

23           Here's an aerial. This is from West Sacramento  
24 looking towards Sacramento. And you can see I-80/50 on  
25 the right side, moving up to the right corner, and former

1 Route 275 on the left, moving up, and then the Sacramento  
2 River, and, in fact, I will use the mouse here, here is  
3 Raley Field, which many of you are probably at least  
4 roughly familiar with as you drive up I-5, you see it  
5 across the river.

6 This is a city focus area. It's city focused for  
7 a number of reasons. It has wonderful views of Downtown  
8 Sacramento. It's adjacent to Downtown Sacramento.  
9 There's a development team ready to go. And perhaps most  
10 importantly, it's high ground. This is not an area that's  
11 protected by levees. This is high ground. So there  
12 aren't levee issues.

13 There happens to be a levee in the high ground,  
14 but it's not protected by the levee. And so it's really  
15 ideal because as standards change, and we're concerned  
16 about underseepage issues, those types of issues don't  
17 affect this ground. It really makes it ideal for future  
18 dense development. It's very environmentally friendly.

19 Here's an image of what the triangle could look  
20 like. The road along the bottom that runs parallel to the  
21 bottom is I-80 -- excuse me. Business 80, Route 50. And  
22 you can see the Sacramento River running from the lower  
23 right to the upper left. And then you can see 275, which  
24 is over here, between Raley Field and the Pyramid, or the  
25 Ziggurat, through there.

1           So you can see, this area is slated for some  
2   pretty dense development, which would build out over the  
3   next 20, 30 years.

4           PRESIDENT CARTER: Mr. Shapiro, is this  
5   historically high ground, or is this filled?

6           MR. SHAPIRO: This is fill. And as you will see  
7   on this slide, actually, the second bullet, high ground is  
8   based on years of deposit. This is deposit from a number  
9   of sources. Probably started off as a result of building  
10  the railroad up, because that used to be a railroad that  
11  ran through this area. In fact, there are still some  
12  lines.

13          And this is probably where, as the Sacramento  
14  Harbor, you know, the Downtown Sacramento area was dredged  
15  year after year after year so boats could get in there,  
16  this is where they dumped it. So as a result, this is a  
17  very high area, as it is a super levee. In essence, much  
18  like Old Sacramento is.

19          But importantly, there's no visible cues as to the  
20  location of the levees. That means not only can't you see  
21  the top of it, it means when we do borings, when we go  
22  down to look for where it ends, we can't see a difference,  
23  because the same materials that were pulled out of the  
24  river to build it up are the same materials that for eons  
25  before overflowed the river and created the area itself.



1 So it's a consistent material all the way through.

2 Here's a comparative cross-section to give you a  
3 sense of what the area is like from an elevation  
4 standpoint. The top cross-section is a typical project  
5 levee section. The right side, over here where my cursor  
6 is, is the Sacramento River; your typical slope up, your  
7 3-to-1 slope, your top, your slope down at 2 to 1, and  
8 then your existing ground, which is behind the levee.

9 The bottom is our triangle high ground. Same  
10 slope up, and then as you can see, a long expanse of  
11 existing ground. And even back hundreds of feet, in fact,  
12 I think it's like a thousand plus feet, you are still  
13 above base flow elevation. You are actually still higher  
14 than the '57 profile or the hundred-year flood area.

15 So our challenges are, we can't find the levee.  
16 There are no as-builts that show where the levee is. The  
17 O&M manual has a picture of the Sacramento region. And  
18 through this area, there's little dots that indicate it's  
19 a project levee, but no ability to discern, is the project  
20 levee at the bank, inland, where is it.

21 There were no easements ever acquired by the  
22 Sacramento-San Joaquin Drainage District for this project  
23 levee. When the Corps came in and the state partnered,  
24 they probably looked at high ground and said, that's good  
25 enough, it's high ground; we don't need to do anything

1 here.

2 And so the only easements are RD900 easements from  
3 the turn of the century, and they don't even cover the  
4 whole area.

5 As I mentioned, the borings don't allow you to  
6 figure out what's native and what's not native. There's  
7 no clear line of jurisdiction for the Board, and there's  
8 no landowner understanding of where jurisdiction ends,  
9 which is why we're here today.

10 So our proposed solution: Create a virtual levee  
11 within the high ground and make sure that the virtual  
12 levee provides a clear location of the project for the  
13 locals, for the State, for the Corps, for the landowner,  
14 so everyone knows where the project levee is. And then we  
15 would record that project levee through new easements that  
16 would be granted from the landowners to the Sacramento-San  
17 Joaquin Drainage District. And as I think you all know,  
18 this Board acts as the board of the Sacramento-San Joaquin  
19 Drainage District.

20 This would provide the Board, as the regulating  
21 agency, undisputed jurisdiction to regulate activities  
22 within that virtual area. It would be very clear where  
23 your jurisdiction lies. We'll talk in a little while  
24 about beyond that line, and we're not saying jurisdiction  
25 ends at that line, but from that line, waterward, it's

1 very clear you have jurisdiction.

2           So how do we build a virtual levee? Well, first,  
3 we came up with a 3-to-1 waterside slope. And as you will  
4 see, we actually pushed that waterside slope inland to  
5 account for erosion. And I will show you that later.  
6 Twenty-foot top width. The top of the levee elevation,  
7 we're basically using as current ground. Even though it's  
8 actually higher than a project levee, the levee is about  
9 one and a half feet higher than a project levee would be  
10 in this reach. The '57 profile is one and a half feet  
11 below actual ground. But we're still building it up to  
12 the current ground, 20-foot width, 2-to-1 back slope, and  
13 then a 10-foot virtual inspection road, recognizing that  
14 road is underground.

15           PRESIDENT CARTER: Is that '57 profile on top of  
16 the levee elevation include 3 feet of freeboard?

17           MR. SHAPIRO: It's '57 plus 1 and a half, plus 3.

18           PRESIDENT CARTER: Thank you.

19           MEMBER BURROUGHS: Could you repeat your last  
20 statement about the virtual road?

21           MR. SHAPIRO: Sure.

22           We're creating a 10-foot further easement for your  
23 inspection roads. You can inspect the back slope of the  
24 levee. But of course, there is no back slope of the  
25 levee, so it's really just 10 extra feet. You would never

1 burrow down 14 feet and construct a road underground. So  
2 it's just an additional 10 feet on to the 2-to-1 slope,  
3 the 20-foot top width, and the 3-to-1 slope.

4 So let me show you visually. This is the profile  
5 of the virtual levee. The blue is the virtual levee we've  
6 created; the purple is what's actually there. And so what  
7 you can see is we have a 3-to-1 slope here; we have a  
8 20-foot top width here; we have a 2-to-1 slope; we have a  
9 10-foot setback or virtual road, that's between these two  
10 lines; and we end up with this red line, which is the  
11 proposed easement line and building setback.

12 In other words, the Corps has -- excuse me. The  
13 Board has undisputed jurisdictions, waterward side of the  
14 line, and some jurisdiction landward side. And we'll talk  
15 about what that "some" means.

16 MEMBER BURROUGHS: Before you move on, could you  
17 show what you were talking about, pushing it into the  
18 waterside?

19 MR. SHAPIRO: Absolutely.

20 This right here, where the cursor is -- can you  
21 see that there? Where the cursor is, is what's called the  
22 hinge point. It's where the slope comes up and moves to  
23 the top of the levee.

24 And so one approach would have been to say, this  
25 is the hinge point and we're going to move 20 feet in from

1 here, and we're going to recognize that this slope, while  
2 it's not 3 to 1, is the existing slope and, therefore, the  
3 existing levee.

4 We said that's not sustainable for a long-term  
5 program, because all of this, which is called overburden,  
6 has the potential to erode away, back to a 3-to-1 slope.  
7 Indeed, the reason this slope is so steep is probably  
8 historic erosion.

9 So even though the original levee was probably in  
10 this area, we're saying, no, we're going to push the  
11 3-to-1 slope back so now the levee is in this area. And  
12 the methodology we used to do that is, we took this 3-to-1  
13 slope, and we started over here in the water, and we kept  
14 pushing it landward until every bit of that line was  
15 covered by existing ground.

16 So here you can see, right here, it doesn't  
17 daylight; that's where the two come together, the existing  
18 slope and the 3-to-1 slope come together. So by doing  
19 that, we end up with a much more conservative levee  
20 profile than if we kept it waterward where the levee  
21 probably was.

22 MEMBER BROWN: What are you going to do with the  
23 cut?

24 MR. SHAPIRO: What are we going to do with this?

25 MEMBER BROWN: With the cut.

1           MR. SHAPIRO: Well, we're not proposing today  
2 anything in terms of levee improvements or changes. This  
3 area over time will either need to be stabilized or  
4 potentially removed in order to assure a stable levee.  
5 That's going to be part of West Sacramento's improvement  
6 program, which you will be seeing over the next few years.

7           All we're doing today is making sure that area is  
8 available for whatever the solution is.

9           MEMBER BROWN: Okay.

10          MR. SHAPIRO: President Carter, you started to ask  
11 a question.

12          PRESIDENT CARTER: How did you determine on the  
13 land side 2-to-1 slope how far down to go?

14          MR. SHAPIRO: Good question.

15          What we did was, is we had to come up with an  
16 actual estimate for what that surface is. And the first  
17 way we tried to do that was the borings we talked about.

18          We thought if we went and bored down, we would get  
19 to a point where the materials would change and determine  
20 the native grade. We couldn't find native grade that way.

21          We actually went back and found -- I believe it  
22 was in 1911 -- a 1908 survey the Corps did. And actually,  
23 this was before this area was built up, and that survey  
24 from the Corps showed this area as having elevation 21.

25          Now, if I'm mistaken, it actually showed it as 24,

1 but after you converted data on it, it actually brought it  
2 down to 21. So if you ever see that and you see 24, you  
3 will know why we went with 21. But we actually had a  
4 survey that showed us that.

5 PRESIDENT CARTER: Okay.

6 MR. SHAPIRO: So here we have the profile of the  
7 virtual levee, the whole purpose of which is twofold: One  
8 is to draw this line, this red line, so that people can  
9 know they can't do stuff waterward; and the second is to  
10 accommodate future improvements, as Member Brown noted,  
11 both in terms of this overburden but also in terms of  
12 getting to 200-year.

13 So let's get to that issue of 200-year. We're not  
14 proposing 200-year today. That would require a levee  
15 raise. And that's not on the agenda today. There's no  
16 action item before you. But we want to make sure this can  
17 accommodate future action. We want to make sure we're  
18 really thinking through where things are going to go.

19 To achieve the 200-year level of protection would  
20 require a raise of an additional approximately 1.5 feet.

21 The native ground, we call it now native, but of  
22 course it's all fill, actually varies in topography a bit.  
23 So it's on average about 1.5 feet. We need to make sure  
24 that the new levee, that would be before you some day in  
25 the future, can be built within this easement area that

1 we're talking about.

2 And so we developed three different alternatives  
3 to demonstrate and get to 200-year. And we met with your  
4 staff on each of these to make sure they agreed,  
5 technically, these were viable solutions.

6 So here's the first one: The levee improvement to  
7 get to 200-year is illustrated in this mauve or pink color  
8 right here.

9 And what you see is, we've added a new little  
10 trapezoid to the top of native ground. And the trapezoid  
11 is designed with a 20-foot top width, which is a  
12 traditional levee top width; 3-to-1 slope on one side;  
13 2-to-1 slope on the other side. And because it's only one  
14 and a half feet, it, in essence, is entirely a freeboard  
15 issue.

16 The 200-year water surface elevation is one and a  
17 half feet below current surface of the area. And so you  
18 got one and a half feet of existing grade for freeboard,  
19 and this would add one and a half feet of freeboard  
20 through this trapezoid. We're not advocating this. We  
21 actually think it's probably the least or the second least  
22 favorite of the three solutions we're going to show you,  
23 but it's a completely engineering viable solution.

24 In fact, if you care to look at yours, and I won't  
25 go through it in detail, you can see over here on the



1 right side the indication of all the different  
2 elevations -- 200-year plus 3 feet; 200-year without  
3 3 feet; the '57 design. So you can compare all the  
4 different elevations.

5           Here's the second solution: Add a  
6 one-and-a-half-foot floodwall at what is really the hinge  
7 point, even though it's substantially in from the current  
8 hinge point. We don't particularly like this solution of  
9 a floodwall. We think it's not going to be elegant for  
10 the use of this land, which one day is a river walk, but  
11 it could be incorporated into a design. You have steps  
12 and walkways and planters, and it could be built into it.  
13 But it's a completely technically feasible solution,  
14 especially when you think about the fact that the flood  
15 wall's protecting you from freeboard only at this point.

16           And then the third solution, which frankly we like  
17 the best, and I think your staff liked the best, was to  
18 provide some significant fill so that we continue to raise  
19 native grade up an additional foot and a half. We do it  
20 all the way from the hinge point all the way back to the  
21 proposed easement line, which you see is right here. And  
22 then it actually feathers off from there.

23           So to the extent there's new construction of  
24 condominiums, buildings, whatever, they walk out at this  
25 new higher level. And we've further beefed up this entire

1 area. Now it's not just native ground that's really high;  
2 we have something like 60 feet of adding a foot and a  
3 half, which really provides excellent protection as well.

4 So we're not advocating one of these three today.  
5 We're just demonstrating that these are three options that  
6 are viable. Your staff, I believe, has agreed, although,  
7 they will comment if they choose to. And from a river  
8 walk standpoint, we like the third one best. And I think  
9 your staff has felt, technically, it's the best as well.

10 So a proposed process. The City has been engaged  
11 in this process for a number of years. Land owners,  
12 including Lynne, have been engaged in this process five to  
13 seven years, I believe it is. And they are looking to try  
14 to get some certainty as to where the line is so they can  
15 move forward with really what should be some of the best  
16 buildable ground in the area, because it's above base  
17 flood elevation. It's not protected by levees. It's just  
18 a great place to be able to construct.

19 So we're looking for feedback from you today, that  
20 this proposal makes sense. If it does, we will work with  
21 the landowners and Board staff and DWR's real estate  
22 staff, which acts as your staff, to develop appropriate  
23 easement language, agreement on where that line is,  
24 develop those agreements, and then bring them back to  
25 you -- excuse me, for you to accept it as the board of the

1 Sacramento-San Joaquin Drainage District.

2 Under state law, even if the land owner has  
3 conveyed easements to you, they are not effective unless  
4 you accept it.

5 Unlike the last item that was before you, we have  
6 an e-mail from Jim Sandner saying, he thinks this is a  
7 good solution. So this has been vetted by the Corps as  
8 well. They think this makes sense. They think it cleans  
9 up somebody's mistake from 50 years ago, creates  
10 easements, a nice clear jurisdiction as well.

11 The last thing I want to talk to you about are  
12 outstanding issues. And we don't really seek feedback on  
13 these. We want to at least clue you in that these issues  
14 exist.

15 The landowners who are going to be constructing  
16 here respect the Board's jurisdiction, and it's very clear  
17 what that jurisdiction is waterward of the new line. It's  
18 less clear what it is landward of the new line.

19 You can imagine borings being done, pile driving,  
20 trenching, excavation, underground garages. And they want  
21 a very clear and known process so that as they are working  
22 in high ground, 14 feet above native grade, they don't  
23 have to wonder if everything requires a permit. And you  
24 don't have to have someone out there every week,  
25 inspecting, saying that should have a permit.

1           And frankly, we advised them -- I advised them,  
2   having dealt with this issue up on the Yuba with  
3   Caltrans -- that it's better to find out in advance what  
4   the jurisdiction is and get agreement on it, and it's much  
5   smoother. And they have agreed.

6           And so there's a technical committee that's been  
7   created, and Shanna is convening it. And it includes your  
8   staff and your engineers and the city's engineers to  
9   develop some absolute rules like, if you are trenching  
10  3 feet landward of the line, you don't need a Board  
11  permit. But if you are putting pile drives in 10 feet  
12  from the line that go 50 feet down, you do need a permit.

13          And by getting some of those absolute rules, then  
14  it will be clearer how to proceed in the future.

15          I think there's going to be three categories.  
16  There's going to be stuff waterward of the line, that we  
17  all agree a permit is needed; there's going to be stuff  
18  landward of a certain point, that we all agree a permit's  
19  not needed; and then there's going to be the stuff in  
20  between as far as judgment. And there, there will be some  
21  sort of rule of contact, like the City agrees that every  
22  application that has those elements would be forwarded to  
23  your staff so they can be aware of it, or the City will  
24  tell the landowners, oh, that pile driving you want to do,  
25  you have to go check with the Board.

1           And we envision ultimately some sort of MOU  
2   between the Board and the City so we have clear rules,  
3   we're telling them what you want us to tell them, they  
4   have certainty as to what to do, and we can all get  
5   agreement.

6           So this is future. But I thought it was at least  
7   worth noting to you. This is the next step for us if you  
8   all give us positive feedback on the line.

9           So with that, I will answer any questions you  
10   have.

11           PRESIDENT CARTER: Does the Corps think that they  
12   have got a levee there? Do they have a project levee in  
13   that area?

14           MR. SHAPIRO: The O&M manual shows a project levee  
15   there. Those little dots.

16           PRESIDENT CARTER: And is it the same levee as  
17   what you have defined?

18           MR. SHAPIRO: The little dots are on a scale that  
19   you can't figure out where the levee is. There's no  
20   as-builts; there's no detailed drawings. There's just  
21   little dots on a page that goes from Freeport to the top  
22   of Natomas, on 8 1/2 by 11, with little dots through this  
23   area, and that means project levee.

24           PRESIDENT CARTER: So there's no way the Corps can  
25   tell you what the prism of the levee looks like?

1 MR. SHAPIRO: No. That's right.

2 And that's why we said, okay, let's design what  
3 would have been a '57 levee; 3-to-1; 2-to-1; 20-foot;  
4 10-foot back; and then let's beef it up even further for  
5 safety; move the 3-to-1 slope to a new hinge point; make  
6 sure that there's actually that extra foot and a half on  
7 the top, because '57 profile is a foot and a half lower,  
8 so we're getting that extra height, which beefs up the  
9 levee even more. And the Corps' reaction was, this is an  
10 intelligent way to proceed because at least it gives us  
11 some certainty, and it's what we have had required if we  
12 were designing right now.

13 PRESIDENT CARTER: And we are -- we have an  
14 LPCA -- or a PCA with the Corps to maintain this levee  
15 that they don't know what the profile is?

16 EXECUTIVE OFFICER PUNIA: It's not a clearly  
17 defined profile, but just as Scott is indicating that  
18 there is a levee there, so we are now defining in this  
19 process what that levee is.

20 PRESIDENT CARTER: Any questions for Mr. Shapiro?

21 MEMBER RIE: Yes. How far does the high ground go  
22 back from the hinge point?

23 MR. SHAPIRO: It's at least 700 feet.

24 MEMBER RIE: And what kind of soil is that?

25 MR. SHAPIRO: It's just the soil that's down here

1 in the bottom of the valley. And I realize that's a very  
2 nonengineer answer, but the fact that we bored down and  
3 found the same stuff all the way down, it's suitable for  
4 building on.

5 PRESIDENT CARTER: Alluvium.

6 MR. SHAPIRO: Thank you. He's an engineer.

7 MEMBER RIE: When we are having this technical  
8 group look at what should require a permit and what  
9 shouldn't, are we worried about a seepage path from the  
10 river going all the way back?

11 MR. SHAPIRO: We talk about that a lot in our  
12 discussions. There's really no seepage concerns with a  
13 700-foot-wide levee because, of course, it's the seepage  
14 path, and when it gets that long, just like when you have  
15 a seepage berm on, there's no issue with material passing  
16 through.

17 So the concerns were things like, well, what if  
18 you excavated a three-story-deep parking garage, then that  
19 would potentially create a seepage path. And the casual  
20 discussion amongst the engineers was, once the garage is  
21 there and it's all concrete, it's probably no problem.  
22 But during the flood season, when there's a 30-foot deep  
23 hole, then it's a problem. And those are the kinds of  
24 activities we want to regulate.

25 MEMBER BURROUGHS: Concrete and water are always a

1 problem.

2 PRESIDENT CARTER: Any other questions for  
3 Mr. Shapiro?

4 Mr. Hodgkins?

5 VICE PRESIDENT HODGKINS: I understand 200 years  
6 is what's currently legislated. This is clearly going to  
7 be a showcase for the City of West Sacramento. My  
8 prediction is that at some point, we're not going to be  
9 happy with 200-year flood protection.

10 I would encourage you folks to think about how you  
11 are going to address providing a higher level of flood  
12 protection. I don't know, maybe another 5 feet. And  
13 recognize that I mean that's trying to account for sea  
14 level rise, and it's still just a number out of the air.

15 So I think that's something to think about.

16 I think the other thing that we have is erosion is  
17 a potential problem here. On the other side of the river  
18 through most of that area, there's a concrete retaining  
19 wall that was tied back to provide adequate support for  
20 that ground, and you are going to build what is going to  
21 be a showcase here, right next to the river. I would be  
22 concerned that at some point in the future, we're going to  
23 have a big argument, when this starts to erode, about  
24 who's responsible for fixing it. I would encourage you to  
25 think about that.



1           And I guess that's -- and you have thought about  
2   the other one. I mean, I can't tell you how nervous I was  
3   when the excavation was being done for the foundation of  
4   the City of Sacramento's new hotel that's right across  
5   from -- right adjacent to the Towers.

6           MR. SHAPIRO: Embassy Suites.

7           VICE PRESIDENT HODGKINS: Yeah. I did not like  
8   looking at that hole while the river was high.

9           MR. SHAPIRO: The points you raise are points  
10   we're thinking about. They have all come up in the  
11   context of our program. When we come back, as a flood  
12   control agency before you saying here's what we propose to  
13   do, our job now with this river walk, and when I say  
14   "ours," I mean, the City's, is to make sure we can  
15   accommodate the future.

16           And if you imagine in your 58 feet having a  
17   trapezoid being added with a 3-to-1 waterside slope and  
18   2-to-1 land side slope, and a 20-foot top width, and  
19   58 feet, if I'm not mistaken, you can accommodate 7 feet  
20   of raise.

21           VICE PRESIDENT HODGKINS: So the river walk would  
22   not be in there, or at least not the kind of improvements  
23   that couldn't be raised at some point in the future?

24           MR. SHAPIRO: The river walk proposal will come to  
25   you in conjunction with the City's proposal for raising

1 the level of protection in this area.

2 VICE PRESIDENT HODGKINS: Okay.

3 MR. SHAPIRO: The City may come and say 200-year.

4 Here's our river walk.

5 And you then say, can you accommodate three more

6 feet?

7 And they say, yes, but we have to rip it out. And

8 then you have a policy decision whether that makes sense.

9 Or the City may come and say, here's our river

10 walk, and we can accommodate without ripping it out.

11 And those are all decisions a year or two from

12 now. Our job is to make sure we can accommodate all of

13 it. And if my math is right, and someone tell me if I got

14 it wrong, you can accommodate 7 feet of raise in this

15 amount of space.

16 PRESIDENT CARTER: Mr. Brown.

17 MEMBER BROWN: I have just one suggestion. You

18 might consider, if the name's not already taken, I would

19 call it the Golden Triangle.

20 MR. SHAPIRO: I think Shanna will pass that back.

21 PRESIDENT CARTER: Mr. Punia?

22 EXECUTIVE OFFICER PUNIA: I just want to commend

23 the City staff and our staff. Shanna's persistence to

24 coordinate those meetings among property owners, our

25 staff, Corps and to reach a meeting of the minds so that

1 we can bring this to you.

2 MEMBER RIE: When is it coming to the Board for a  
3 decision?

4 EXECUTIVE OFFICER PUNIA: I think we are hoping to  
5 bring it to April. Eric can -- no?

6 MR. SHAPIRO: I think the earliest we would bring  
7 it back to you is May.

8 We need time to develop the easement language and  
9 get landowner agreement, and then we need to bring it back  
10 under the 30-day rule. Realistically, May is the  
11 earliest.

12 The only thing that may hold that up is, we may  
13 want to resolve some of those other jurisdiction issues in  
14 conjunction with the same discussions. And we'll figure  
15 that out.

16 But what I've asked for is if there's any negative  
17 feedback or concerns or suggestions on how to do it  
18 differently, we would love to hear it, because based on  
19 today's meeting, we're going to go ahead and start meeting  
20 with people and asking landowners to actually consider  
21 creating easements and consider transferring them based on  
22 what we presented today.

23 VICE PRESIDENT HODGKINS: I think this is an  
24 excellent approach. I really do.

25 PRESIDENT CARTER: Ms. Suarez?

1           MEMBER SUAREZ: I was going to ask Ms. Cahill if  
2 she could take in the next couple of months and just kind  
3 of corroborate the process that we have set up for our  
4 current board, our processes that we can still use, since  
5 we're going to be sitting as a different entity for these  
6 processes, for these approvals; is that correct?

7           MR. SHAPIRO: You're asking whether the new  
8 hearing procedure that you use would mandate doing the  
9 same thing the Sacramento-San Joaquin Drainage District?

10          MEMBER SUAREZ: Or actually, can we have ex parte  
11 contact? No, I'm kidding. Just want to kind of  
12 corroborate those two things together. And I would agree  
13 with Mr. Brown and Mr. Hodgkins and everybody else. I  
14 think it's great.

15          So good luck.

16          SECRETARY DOHERTY: The only thing that scared me  
17 was the underground parking garage.

18          PRESIDENT CARTER: Ms. Burroughs?

19          MEMBER BURROUGHS: Yes. Some of the concerns I  
20 have is that you have used the minimum standard for levee,  
21 so the crown of the levee is 20 feet. When you have all  
22 kinds of buildings, especially some of the earlier slides  
23 that we saw of what could possibly be, there were  
24 buildings that were butt up right next to the 20-foot  
25 crown of the levee.

1           And some -- even the roofs could come down and  
2   make it impossible to bring equipment in there. So my  
3   concern is that I'm not interested in the minimum, but  
4   rather, the maximum, especially in lieu of the fact that  
5   there's going to be buildings of encroachment that will be  
6   right close to the area where we would need to do flood  
7   fighting work and have easement availability to inspect  
8   the levees as such.

9           And then you brought it up, but yeah, we do have  
10   jurisdiction as far as we need to. So we need to discuss  
11   that.

12           Thank you.

13           MR. SHAPIRO: I think your staff would absolutely  
14   agree with you. In fact, the proposal the City brought  
15   last year was 38 feet, and it was your staff saying,  
16   that's a minimum; we need more. That resulted in us  
17   coming back with 58 feet, which I think has addressed your  
18   technical concerns, but we will of course continue that  
19   dialogue with them.

20           MEMBER BURROUGHS: Thanks for not showing any  
21   trees.

22           MR. SHAPIRO: They are out there. They are just  
23   not in the drawing.

24           PRESIDENT CARTER: Any other comments?

25           My only comment is something -- the terminology

1 that the Corps uses is to protect the Corps prism of the  
2 levee, which it appears you are trying to do.

3 However, I would encourage any kind of development  
4 that approaches that red line, you know, with any  
5 reasonable distance, 50 feet or less, be a small structure  
6 and reserve your parking garages and large trenching to  
7 well beyond the landward toe of the levee.

8 MR. SHAPIRO: The MOU process we talked about  
9 would ensure that if any of those structures that the  
10 staff was concerned about were going to be built, you'd  
11 know about it and we'd have someone speak to that.

12 PRESIDENT CARTER: Thank you very much for giving  
13 us a heads-up.

14 MR. SHAPIRO: Thank you. And I hope it was fast  
15 enough.

16 PRESIDENT CARTER: All right.

17 If there's nothing else, Mr. Punia.

18 EXECUTIVE OFFICER PUNIA: If the Board will allow  
19 me -- I'm not going to go through my full report -- but I  
20 want to bring three issues in less than a minute to  
21 Board's attention.

22 Vacancies in the Floodway Protection Section. As  
23 you are aware, the floodway protection section is the  
24 Department of Water Resources which help us to write the  
25 permits. Out of the eight positions, we have four

1 vacancies. And we are requesting Department of Water  
2 Resources to fill those positions as soon as possible.  
3 But still, it's taking too long to fill those positions.

4 So you will see some delays in your regular  
5 permits because Steve Dawson -- and there's only three  
6 other people, where our standard section has eight people  
7 in that section.

8 Then based upon the recent experience we have with  
9 our evidentiary hearings, I'm formally convinced that this  
10 process cannot work to bring each and every project to you  
11 asking your approval. Based upon Ben Carter's request, we  
12 did a quick analysis of our last year's permits. There  
13 were more than a hundred permits. Less than 5 percent of  
14 the permits were brought to the Board. The rest were at a  
15 staff level, without evidentiary hearings and without  
16 preparing formal reports for the Board. So I think we  
17 need to fix that situation as soon as possible.

18 Another bottleneck in our process is the comments  
19 from the U.S. Army Corps of Engineers. I think we are not  
20 getting their letters and the comments on time, and that's  
21 impacting bringing information to you. I am going to meet  
22 with the Corps management and we have expressed the  
23 concern to the Corps management also. So any assistance  
24 you can provide to the Board level I think I would  
25 appreciate it.

1           Thank you.

2           MEMBER RIE:   That was two minutes.

3           PRESIDENT CARTER:   And I will take another ten  
4   seconds, and that is that I took the opportunity, at Rose  
5   Marie's suggestion, while we were over there at the Corps  
6   this morning to mention to Christine Altendorf that we had  
7   eight items on our consent calendar, many of which, most  
8   of which, we had to postpone because we did not have Corps  
9   comments, and she said she would work on it.

10           So we need to continue to work on this issue.

11           The issue with the Floodway Protection Section and  
12   DWR, it's a little bit disconcerting given our  
13   negotiations with regard to our long-term MOU, because we  
14   don't seem to be on the radar screen with DWR, and it's a  
15   little bit frustrating. We don't seem to be on the radar  
16   screen with the governor's office either. So it's a  
17   little bit frustrating trying to work through that process  
18   at this point.

19           EXECUTIVE OFFICER PUNIA:   One more comment, if I'm  
20   allowed.

21           Steve Dawson is sitting behind. He's  
22   single-handedly doing the job of four people, but there's  
23   a limit how much one person alone can accomplish.

24           MEMBER BURROUGHS:   Let me -- what can we do to try  
25   to get more staff to assist us with that? I mean, Steve



1 cannot -- it's not sustainable for Steve to have to handle  
2 that many permits.

3 EXECUTIVE OFFICER PUNIA: At my level, I'm talking  
4 to George Qualley to fill those positions as soon as  
5 possible. So I think a call from Ben will help.

6 PRESIDENT CARTER: I will commit to talking to  
7 Director Snow and expressing that concern, and they have  
8 just as much to gain by getting this thing -- getting  
9 these positions filled as we do.

10 EXECUTIVE OFFICER PUNIA: Thank you.

11 MEMBER RIE: Move to adjourn.

12 SECRETARY DOHERTY: Second.

13 PRESIDENT CARTER: We are adjourned.

14 Thank you for your patience.

15 (Thereupon the California Central Valley  
16 Flood Protection Board meeting adjourned at  
17 5:58 p.m.)

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## 1 CERTIFICATE OF REPORTER

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3 I, KATHRYN S. SWANK, a Certified Shorthand Reporter  
4 of the State of California, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing Central Valley Flood Protection Board Meeting,  
7 was reported in shorthand by me, Kathryn S. Swank, a  
8 Certified Shorthand Reporter of the State of California,  
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand this  
14 3rd day of April, 2008.

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23 KATHRYN S. SWANK, CSR

24 Certified Shorthand Reporter

25 License No. 13061